

Plaintiffs, the United States of America and the State of Michigan, respectfully request the Court, pursuant to Fed. R. Civ. P. 37(a) and Local Rule 37.1, to compel defendant, Blue Cross Blue Shield of Michigan (“BCBSM”), to produce documents responsive to Plaintiffs’ Second Request for the Production of Documents (“Plaintiffs’ Second Request”), served August 2, 2011.

For the reasons set forth in the accompanying memorandum in support of this motion, this Court should grant plaintiffs’ motion to compel and order BCBSM (1) to complete production of email responsive to Plaintiffs’ Second Request by March 30, 2012, and (2) to produce responsive documents from its wholly owned subsidiary, Blue Care Network (“BCN”), by March 30, 2012.

As required by Local Rule 7.1(a), attorneys for plaintiffs conferred with attorneys for BCBSM on many occasions, including as recently as February 7 and 8, 2012, regarding the present motion. Attorneys for plaintiffs did not obtain BCBSM’s concurrence with the relief sought. Plaintiffs, therefore, seek the Court’s consideration of this motion to expedite discovery in this case.

Respectfully submitted,

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TABLE OF CONTENTS

ISSUES PRESENTED.....ii

TABLE OF AUTHORITIES.....iii

I. BACKGROUND.....1

II. ARGUMENT.....2

 A. BCBSM Should Produce Email Responsive to Plaintiffs’ Second Request
 by March 30, 2012.....2

 B. BCBSM Should Produce Blue Care Network Documents.....8

 1. Blue Care Network Documents Are Within BCBSM’s Possession,
 Custody, or Control.....9

 2. Blue Care Network Documents Are Relevant.....12

 3. Production of BCN Documents Does Not Impose an Undue
 Burden.....15

III. CONCLUSION.....18

STATEMENT OF ISSUES

- 1) Whether BCBSM should be ordered to produce all email responsive to Plaintiffs' Second Request for Production of Documents, served August 2, 2011, by a date certain, where BCBSM has yet to produce any email six months after service of the document request and refuses to agree to a schedule for email production?

- 2) Whether BCBSM may refuse to search for and produce relevant responsive documents from Blue Care Network ("BCN"), its wholly owned HMO subsidiary, in response to Plaintiffs' Second Request for Production of Documents?

TABLE OF AUTHORITIES

Cases

Afros S.P.A. v. Krauss-Maffei Corp., 113 F.R.D. 127, 130 (D. Del. 1986).....10
American Angus Ass’n v. Sysco Corp., 158 F.R.D. 372, 375 (W.D.N.C.1994)..... 10*
Appleton Papers Inc. v. George A. Whiting Paper Co., No. 08-16,
 2009 WL 2408898, at *1 (E.D. Wis. July 31, 2009).....10*
Bricklayers Pension Trust Fund-Metropolitan Area v. Everlast Masonry,
 No. 09-11290, 2009 WL 3837147, at *1 (E.D. Mich., Nov. 16, 2009).....11, 15-16*
Camden Iron and Metal, Inc. v. Marubeni America Corp., 138 F.R.D. 438, 441
 (D.N.J.1991).....10
Flagg v. City of Detroit, 252 F.R.D. 346, 353 (E.D. Mich. 2008).....9-10*
Gerling Intern. Ins. Co. v. C.I.R., 839 F.2d 131, 140 (3d Cir. 1988).....10
Gray v. Faulkner, 148 F.R.D. 220, 223 (N.D. Ind. 1992).....10
In re Bankers Trust Co., 61 F.3d 465, 469 (6th Cir. 1995).....9*
In re Dow Corning, No. 95-20512, 2010 WL 3927728, at *10 (E.D. Mich. June 15,
 2010).....10
John B. v. Goetz, No. 3:98-0168, 2010 U.S. Dist. LEXIS 8821, at *191
 (M.D. Tenn. Jan. 28, 2010).....15*
Kormos v. Sportsstuff, Inc., No. 06-15391, 2007 WL 2571969, at *1
 (E.D. Mich., Sept. 4, 2007).....12*
Nissan N.A., Inc. v. Johnson Elec. N.A., No 09-11783, 2011 WL 1002835, at *4
 (E.D. Mich. Feb. 17, 2011).....3
Tarleton v. Meharry Med. Coll., 717 F.2d 1523, 1534 n.4 (6th Cir. 1983).....15*
Tenneco Automotive Co. v. Kingdom Auto Parts, No. 08-10467,
 2008 WL 5263836, at *1 (E.D. Mich. Dec. 18, 2008).....5-6
Travelers Indem. Co. of Connecticut v. National Fair Housing Alliance,
 No. 08-14261, 2009 WL 3497793, at *1 (E.D. Mich., October 28, 2009)..... 9*
United States v. Dentsply Int’l, Inc., 190 F.R.D. 140, 144 (D. Del. 1999).....6-7*
United States v. Int’l Union of Petroleum Indus. Workers, AFL-CIO,
 870 F.2d 1450, 1452 (9th Cir. 1989).....10*

Rules

Fed. R. Civ. P. 26.....12
 Fed. R. Civ. P. 34.....5, 9*
 Fed. R. Civ. P. 37.....9*
 Local Rule 37.1.....1

*Denotes controlling or most appropriate authority for the relief sought. LR 7.1(d)(2).

Plaintiffs, the United States of America and the State of Michigan, respectfully submit this memorandum in support of their motion, pursuant to Fed. R. Civ. P. 37(a) and Local Rule 37.1, to compel Defendant, Blue Cross Blue Shield of Michigan (“BCBSM”), to produce documents responsive to Plaintiffs’ Second Request for the Production of Documents (“Plaintiffs’ Second Request”), served August 2, 2011. Specifically, plaintiffs seek an order compelling BCBSM (1) to complete production of email responsive to Plaintiffs’ Second Request by March 30, 2012, and (2) to produce responsive documents from its wholly owned HMO subsidiary, Blue Care Network (“BCN”), by March 30, 2012.

I. BACKGROUND

Following the parties’ exchange of initial disclosures on July 15, 2011, and as contemplated in the parties’ Rule 26(f) Report (Doc. No. 19 at 3), Plaintiffs’ Second Request was served on August 2, 2011. Ex. 1 (Plaintiffs’ Second Request).¹ BCBSM served objections and responses on September 6. Through the meet and confer process, plaintiffs have repeatedly sought to resolve the points of disagreement between the parties relating to BCBSM’s production of documents in response to Plaintiffs’ Second Request. Despite many offers of compromise by plaintiffs, and negotiations spanning many months, the parties have reached an impasse on two issues. First, more than six months after service of Plaintiffs’ Second Request, BCBSM has not yet begun to search for or produced any email, and, despite many proposals by plaintiffs, refuses to agree to a

¹ Plaintiffs’ Second Request is plaintiffs’ principal document request. Plaintiffs’ First Request for Production of Documents, served February 4, 2011, sought primarily documents that BCBSM had already collected during the United States’ pre-complaint investigation but had not yet produced. The Court compelled BCBSM to respond to that document request by Order dated August, 12, 2011. (Doc. No. 66).

schedule for completing its production of email. Second, BCBSM refuses to search for and produce many responsive documents from BCN, BCBSM's wholly owned HMO subsidiary. Those two issues are the subjects of this motion.

As discussed below, the court should order BCBSM to produce all email and all BCN documents responsive to Plaintiffs' Second Request no later than March 30, 2012. The time for BCBSM's timely production of these materials is long past. Therefore, without such an order, plaintiffs will likely be unable to review the documents and complete depositions of BCBSM personnel before the close of fact discovery on July 25, 2012. (Doc. No. 67) (Scheduling Order).

II. ARGUMENT

A. Email Responsive to Plaintiffs' Second Request Should be Produced by March 30, 2012

More than six months have passed since Plaintiffs' Second Request was served, and BCBSM has yet to *begin* reviewing or producing email in response. BCBSM has rejected multiple proposals by plaintiffs for a schedule for the completion of its email production² and refuses even to commit to a date when it will tell plaintiffs when the email production can be expected to begin and to be completed.³ Though plaintiffs months ago agreed to limit BCBSM's search obligations to 33 custodians and to "search

² See Ex. 15 at ¶¶ 3-4 (Declaration of A. Fitzpatrick Regarding Plaintiffs' Motion to Compel dated Feb. 10, 2012); Ex. 9 (Letter from A. Fitzpatrick to A. Cummings dated Dec. 22, 2011); Ex. 12 (Letter from A. Fitzpatrick to A. Cummings dated Jan. 24, 2012). Requests for a schedule for email production were made on November 10 and 17, 2011, via telephone. Written requests were made on December 22, 2011 (proposing a schedule with a March 5, 2012 completion date), and January 24, 2012 (proposing a schedule with a March 30, 2012 completion date).

³ Ex. 10 at 3-4 (Letter from A. Cummings to A. Fitzpatrick dated Jan. 6, 2012); Ex 13 (Letter from A. Cummings to A. Fitzpatrick dated Feb. 2, 2012).

terms” and “search strings” that allow for efficient electronic recovery of responsive email.⁴ Plaintiffs have repeatedly explained to BCBSM what it already knows—that BCBSM’s email is critical to effective depositions of BCBSM personnel and that those depositions cannot be scheduled (much less taken) until plaintiffs know when they will receive the email for each custodian. With the discovery clock ticking, further delay by BCBSM prejudices plaintiffs’ ability to conduct adequate discovery. The Court should therefore order BCBSM to produce all responsive email by March 30, 2012.

“Electronic discovery requires cooperation between opposing counsel and transparency in all aspects of preservation and production of ESI.” *Nissan N.A., Inc. v. Johnson Elec. N.A.*, No 09-cv-11783, 2011 WL 1002835, at *4 (E.D. Mich. Feb. 17, 2011) (internal quotation marks and citation omitted). BCBSM’s delay in producing email is due solely to BCBSM’s tactics. For example, BCBSM has repeatedly and unnecessarily drawn out negotiations over, and its testing of, the search terms to be used. BCBSM took five weeks to respond to plaintiffs’ first search-term proposal.⁵ When BCBSM finally responded with objections to certain search terms, it made no counterproposal for narrowing those search terms, nor did it provide plaintiffs with

⁴ On September 8, 2011, the parties agreed that BCBSM would use search terms and search strings to which they would agree, to locate responsive email, and that the search would be limited to specific custodians. Ex. 15 at ¶ 2 (Declaration of A. Fitzpatrick Regarding Plaintiffs’ Motion to Compel dated Feb. 10, 2012).

⁵ Less than two weeks after agreeing to agree on search terms and custodians, plaintiffs proposed search terms and search strings to BCBSM on September 16, 2011. Ex. 2 (Letter from A. Fitzpatrick to A. Cummings dated Sept. 16, 2011). Five weeks later, on October 21, 2011, did BCBSM notify plaintiffs by email of certain search terms it claimed were too broad. Ex. 3 (Email from A. Cummings to A. Fitzpatrick dated Oct. 21, 2011).

information with specific test search examples showing why any of plaintiffs' proposals were unreasonable.⁶

Nevertheless, plaintiffs responded in a week with a revised list of proposed search terms and search strings.⁷ It took more than two weeks for BCBSM to respond.⁸ Plaintiffs replied two days later with a few suggested changes,⁹ after which it took BCBSM more than two months to conduct test searches.¹⁰ Those test searches were of little or no value for addressing BCBSM's claim of undue burden, because BCBSM ran the test for thousands of BCBSM employees even though plaintiffs had already agreed to limit BCBSM's email production to 33 custodians.¹¹ Even after agreeing on January 20, to the majority of plaintiffs' proposed search strings (36 out of 45),¹² BCBSM refused to commit to a schedule for the production of email collected using those agreed search

⁶ See Ex. 3 (Email from A. Cummings to A. Fitzpatrick dated Oct. 21, 2011).

⁷ Ex. 4 (Letter from A. Fitzpatrick to A. Cummings dated Oct. 28, 2011).

⁸ See Ex. 6 (Letter from A. Cummings to A. Fitzpatrick dated Nov. 14, 2011).

⁹ Ex. 7 (Letter from A. Fitzpatrick to A. Cummings dated Nov. 16, 2011).

¹⁰ On January 20, 2012, based on test searches run by BCBSM, BCBSM notified plaintiffs that only nine out of the 45 preliminarily-agreed search strings would allegedly "result in an unreasonably large and extremely burdensome number of documents for review." Ex. 11 (Letter from A. Cummings to A. Fitzpatrick dated Jan. 20, 2012).

¹¹ Ex. 12 (Letter from A. Fitzpatrick to A. Cummings dated Jan. 24, 2012). Without consulting plaintiffs, BCBSM chose to test the search strings by running the search across the entire BCBSM email database for a three-month period and then considering the monthly average as an indication of probable volume. *See id.* Relying on test searches run across the entire database—containing the email of thousands of Blue Cross's more than 7,000 employees and former employees—is not an accurate prediction of volume for the review and production from only 33 custodians.

¹² Ex. 11 (Letter from A. Cummings to A. Fitzpatrick dated Jan. 20, 2012) (objecting to nine out of a total of 45 proposed search strings that BCBSM believed were too broad).

terms.¹³ BCBSM then agreed that it would begin running 29 of the 45 search strings proposed by plaintiffs, but gave no estimate of when it would begin, and also refused to agree to a production schedule for email gathered using those 29 search terms.¹⁴

BCBSM has no excuse that it cannot provide an estimate for the start or completion of email production because it does not yet know the amount of email that it will need to review.¹⁵ Had BCBSM run the search terms in early-December, when it represented to plaintiffs that it was doing so,¹⁶ BCBSM would have that information. BCBSM could have run test searches even earlier had it not delayed negotiations over the proposed search term list throughout September, October, and November. If BCBSM had run the 36 out of 45 search strings that it did not object to on January 20,¹⁷ BCBSM would have a majority of that information. Plaintiffs should not be penalized by BCBSM's further delay. *See, e.g., Bricklayers Pension Trust Fund-Metropolitan Area v. Everlast Masonry*, No. 09-cv-11290, 2009 WL 3837147, *1 (E.D. Mich. Nov. 16, 2009) (“Defendant has already had far more time to produce the documents than the thirty days allowed pursuant to Rule 34 . . . The Court will order each Defendant to produce all responsive documents within its possession, custody or control by a date certain.”); *Tenneco Automotive Co. v. Kingdom Auto Parts*, No. 08-10467, 2008 WL 5263836, at *1

¹³ Ex. 12 (Letter from A. Fitzpatrick to A. Cummings dated Jan. 24, 2012).

¹⁴ Ex. 13 (Letter from A. Cummings to A. Fitzpatrick dated Feb. 2, 2012) (agreeing to begin running 29 search strings while the parties continued to negotiate the remaining search strings).

¹⁵ Ex. 10 (Letter from A. Cummings to A. Fitzpatrick dated Jan. 6, 2012); Ex 13 (Letter from A. Cummings to A. Fitzpatrick dated Feb. 2, 2012).

¹⁶ Ex. 15 at ¶¶ 8-9 (Declaration of A. Fitzpatrick Regarding Plaintiffs' Motion to Compel dated Feb. 10, 2012).

¹⁷ Ex. 11 (Letter from A. Cummings to A. Fitzpatrick dated Jan. 20, 2012).

(E.D. Mich. Dec. 18, 2008) (ordering production by a date certain when documents were overdue by approximately three months at time of order).

BCBSM's latest tactic to delay its email production further is its insistence on agreement to a single set of search terms by plaintiffs in all of the pending private actions—including in a new action filed by Aetna four months after Plaintiffs' Second Request was served. As we understand it, BCBSM's position is that it will not search for responsive email in this case until such a global agreement is in place.¹⁸ In effect, BCBSM has decided on its own to coordinate—and therefore delay—discovery in this enforcement action with discovery in the tag-along damages actions.¹⁹

Further open-ended delay is at odds with Congress's expressed intent that government antitrust enforcement actions proceed to hearing and determination "as soon as may be." 15 U.S.C. § 4. Complementing this statutory directive, in the statute authorizing multi-district litigation, 28 U.S.C. § 1407, Congress specifically exempted government antitrust injunctive actions from being "coordinated or consolidated [in] pretrial proceedings" with "tag-along" private damages cases. *See id.* at § 1407(a), (g). Congress "in weighing the public interest in expedited resolution of government antitrust enforcement actions against the potential burdens of duplicative discovery on defendants . . . chose to strike the balance in favor of the public's interest in expedited relief." *United States v. Dentsply Int'l, Inc.*, 190 F.R.D. 140, 144 (D. Del. 1999). Accordingly,

¹⁸ *See* Ex. 14 (Letter from A. Cummings to A. Fitzpatrick dated Feb. 7, 2012) ("because of these ongoing discussions [with private plaintiffs], Blue Cross has not yet pulled or begun to review email").

¹⁹ Plaintiffs have, in fact, cooperated with coordinated discovery by, for example, sharing time with private plaintiffs in deposition practice, to the extent that it has not unduly delayed or interfered with prosecution of this action.

“Congress has made the decision that inefficiencies and inconvenience to antitrust defendants are trumped by an unwillingness to countenance delay in the prosecution of Government antitrust litigation.” *Id.* at 146.

Moreover, lack of agreement on search terms with plaintiffs in the private actions imposes no significant additional burden on BCBSM in responding to Plaintiffs’ Second Request in this case. BCBSM already agreed that it would run the majority of the search strings (29 search strings) negotiated in this matter while negotiating the remainder (16 search strings).²⁰ If BCBSM can run 29 search strings agreed to between the government plaintiffs and BCBSM, while negotiating additional search strings (and presumably then running additional search strings), BCBSM should be equally capable of running additional search strings that it may agree to with the private plaintiffs without any undue burden.

Given (1) the length of time BCBSM has already had to respond to Plaintiffs’ Second Request (more than six months as of the date of this motion) and its delay in doing so, (2) BCBSM’s refusal to propose any schedule, and (3) the need for completion of fact discovery, including depositions of BCBSM personnel, within the time allotted by the Court for fact discovery, plaintiffs respectfully maintain that ordering a schedule for the production of BCBSM’s email is necessary and reasonable. Quite simply, plaintiffs are entitled to a reasonable amount of time to review BCBSM’s email before depositions of BCBSM personnel, and plaintiffs seek to complete those depositions by the close of fact discovery in this case on July 25. If BCBSM is not ordered to produce its responsive email promptly and by a date certain, well in advance of the end of fact discovery,

²⁰ Ex. 13 (Letter from A. Cummings to A. Fitzpatrick dated Feb. 2, 2012).

BCBSM's conduct will likely make completing fact discovery on schedule impossible. Plaintiffs therefore move for a schedule for completion of BCBSM's production by March 30, 2012. BCBSM has had ample notice that plaintiffs have sought completion of BCBSM's email production on or before that date.²¹

B. BCBSM Should Produce Blue Care Network Documents

BCBSM refuses to search for and produce many responsive, relevant documents from BCN, its wholly owned HMO subsidiary. BCBSM objected to the inclusion of BCN as part of BCBSM in Definition A²² of Plaintiffs' Second Request, claiming overbreadth, undue burden, and lack of relevance.²³ BCBSM also objected to some—though not all—of the requests (Requests 20-21, and 26-30), claiming that BCN

²¹ See Ex. 9 (Letter from A. Fitzpatrick to A. Cummings dated Dec. 22, 2011); Ex. 12 (Letter from A. Fitzpatrick to A. Cummings dated Jan. 24, 2012); Ex. 15 at ¶¶ 3-4 (Declaration of A. Fitzpatrick Regarding Plaintiffs' Motion to Compel dated Feb. 10, 2012).

²² Ex. 1 at 2 (Plaintiffs' Second Request). Definition A of Plaintiffs' Second Request states:

The terms "BCBSM," "you," "your company" or "the company," mean Blue Cross Blue Shield of Michigan, its parents, predecessors, divisions, subsidiaries (including the Blue Care Network), affiliates, partnership and joint ventures, and all of its directors, officers, employees, agents, and representatives. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which the company holds at least a 50 percent interest, regardless of how the company's interest is measured (*e.g.*, number of shares, degree of control, board seats, or votes).

Id.

²³ See Ex. 16 at 4 (Defendant Blue Cross Blue Shield of Michigan's Objections and Responses to Plaintiffs' Second Request) ("Blue Cross objects to DEFINITION A on the grounds that Plaintiffs' purported definition of the terms "you," "your company," "BCBSM," and "the company" is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Blue Cross will produce its own documents, not those of its affiliates or subsidiaries.").

documents are not within BCBSM's possession, custody, or control. *Id.* at 14-15, 17-21.²⁴ BCBSM has argued that by seeking BCN documents, plaintiffs are improperly pursuing non-party discovery.²⁵ Except for the email of three BCN custodians,²⁶ BCBSM refuses to search for and produce responsive documents from BCN.

BCBSM's objections to plaintiffs' request for BCN documents are meritless. The BCN documents are within BCBSM's possession, custody, or control, are highly relevant to the litigation, and their collection and production do not impose an undue burden. The Court should therefore overrule BCBSM's objections and order that the responsive BCN documents be produced. *See Travelers Indem. Co. of Connecticut v. National Fair Housing Alliance*, No. 08-cv-14261, 2009 WL 3497793, at *1 (E.D. Mich., October 28, 2009) (Fed. R. Civ. P. 37(a)(3)(B) authorizes a court to compel discovery if a party "fails to properly respond to a request submitted under Rule 34").

1. Blue Care Network Documents Are Within BCBSM's Possession, Custody, or Control

BCBSM is obligated to produce documents within its "possession, custody, or control." Fed. R. Civ. P. 34(a)(1). Documents are within the "control" of a party if it has the legal right to obtain documents on demand. *In re Bankers Trust Co.*, 61 F.3d 465, 469 (6th Cir. 1995); *Flagg v. City of Detroit*, 252 F.R.D. 346, 353 (E.D. Mich. 2008). As "[a] party responding to a Rule 34 production request . . . [BCBSM] is under an affirmative duty to seek that information reasonably available to [it] from [BCBSM's]

²⁴ BCBSM has, therefore, waived any objection based on a lack of possession, custody, or control to all other requests.

²⁵ *See* Ex. 10 at 4 (Letter from A. Cummings to A. Fitzpatrick dated Jan. 6, 2012).

²⁶ BCBSM has agreed to search the email of three BCN custodians, Jeanne Carlson, Kevin Klobucar, and Allison Pollard.

employees, agents, or others subject to [its] control.” *Flagg*, 252 F.R.D. at 353 (quoting *Gray v. Faulkner*, 148 F.R.D. 220, 223 (N.D. Ind. 1992)) (internal quotation marks omitted). Wholly owned subsidiaries like BCN are within a parent’s control. *See, e.g., U.S. v. Int’l Union of Petroleum Indus. Workers, AFL-CIO*, 870 F.2d 1450, 1452 (9th Cir. 1989). “A corporation must produce documents possessed by a subsidiary that the parent corporation owns or wholly controls.” *Id.* at 1452. *See also American Angus Ass’n v. Sysco Corp.*, 158 F.R.D. 372, 375 (W.D.N.C. 1994) (“[A] litigating parent corporation has control over documents in the physical possession of its subsidiary corporation where the subsidiary is wholly owned or controlled by the parent.”) (quoting *Camden Iron and Metal, Inc. v. Marubeni America Corp.*, 138 F.R.D. 438, 441 (D.N.J. 1991)) (internal quotation marks omitted).²⁷

BCBSM owns 100% of Blue Care Network,²⁸ BCBSM’s HMO subsidiary.²⁹ As the sole shareholder of BCN, BCBSM “establishes the global policies under which [BCN] operate[s] and retains oversight of BCN operations.”³⁰ A majority—twelve of

²⁷ *See also Appleton Papers Inc. v. George A. Whiting Paper Co.*, No. 08-cv-16, 2009 WL 2408898, at *1 (E.D. Wis. July 31, 2009) (ordering production of documents from affiliated companies where corporations were member of a group of corporations with a common parent); *Afros S.P.A. v. Krauss-Maffei Corp.*, 113 F.R.D. 127, 130 (D. Del. 1986) (collecting cases); *Gerling Int. Ins. Co. v. Comm’r of Internal Revenue*, 839 F.2d 131, 140 (3d Cir. 1988) (collecting cases). *Cf In re Dow Corning*, No. 95-cv-20512, 2010 WL 3927728, at *10 (E.D. Mich. June 15, 2010) (Hood, J.) (noting the “Sixth Circuit’s ‘universal rule of law’ that the parent and subsidiary share a community of interest, such that the parent, as well as a subsidiary, is the ‘client’ for purposes of the attorney-client privilege.”).

²⁸ *See* Ex. 17, Annual Statement For the Year Ended December 31, 2010 of the Condition and Affairs of Blue Cross Blue Shield of Michigan at 25.12, available at http://www.michigan.gov/documents/dleg/BCBSM_346886_7.pdf.

²⁹ Ex. 18, <http://www.mibcn.com/about/>.

³⁰ *See* Ex. 19, <http://www.mibcn.com/about/corporate/corpStructure.shtml>.

eighteen—of BCN’s directors are appointed by BCBSM. *Id.* BCBSM approves all proposed BCN board actions establishing or changing BCN’s pricing policies, business plans, annual budgets, underwriting guidelines, and rating methods, *see id.*—all subjects directly relevant to this antitrust action. [REDACTED]

[REDACTED] *See, e.g.,* Ex. 20 (BLUEM-99-000006). Employees of BCN are also employees of BCBSM.³¹

BCBSM has demonstrated its ability to produce BCN documents when it chooses to do so. BCBSM collected and produced documents from BCN in response to Civil Investigative Demands issued during the United States’ investigation of BCBSM’s use of MFNs that led to this litigation, and in the investigation of BCBSM’s proposed acquisition of Physicians Health Plan in 2010.³² BCBSM also has committed to produce the email of three BCN custodians in response to Plaintiffs’ Second Request, though it refuses to produce anything else from BCN. *See id.* Thus, BCBSM has demonstrated its control over BCN’s documents. *See Bricklayers Pension Trust Fund-Metropolitan Area v. Everlast Masonry*, No. 09-11290, 2009 WL 3837147, at *1 (E.D. Mich., Nov. 16, 2009) (“A party controls documents that it has the right, authority, or ability to obtain upon demand.”) (internal quotation marks and citation omitted).

³¹ *See* Ex. 17, Annual Statement For the Year Ended December 31, 2010 of the Condition and Affairs of Blue Cross Blue Shield of Michigan at 25.15, available at http://www.michigan.gov/documents/dleg/BCBSM_346886_7.pdf. The only exception is for employees working at BCN’s health center facilities. *Id.*

³² *See* Ex. 5 (Letter from A. Cummings to A. Fitzpatrick dated Nov. 9, 2011).

2. Blue Care Network Documents Are Relevant

Federal Rule of Civil Procedure 26(b) permits the discovery of nonprivileged information relevant to any party's claim or defense if the information is reasonably calculated to lead to the discovery of admissible evidence.³³ BCN documents responsive to Plaintiffs' Second Request are highly relevant for many reasons. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See Ex. 21

(BLUECROSSMI-98-001415-18). [REDACTED]

[REDACTED] *Id.* at BLUECROSSMI-98-001417.³⁴

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] For example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³³ See also *Kormos v. Sportsstuff, Inc.*, No. 06-15391, 2007 WL 2571969 at *1 (E.D. Mich., Sept. 4, 2007) (“The Court is guided by the strong, overarching policy of allowing liberal discovery.”).

³⁴ Another example is found in [REDACTED] Ex. 22 (BLUECROSSMI-08-009329-43 at 35-36). Plaintiffs' Complaint also challenges that MFN. Compl. ¶ 39(f).

[REDACTED] Ex. 22 at BLUECROSSMI-08-009336 (BLUECROSSMI-08-009329-43) (emphasis added).³⁵

[REDACTED]

[REDACTED]³⁶ Plaintiffs allege that HMOs are within the alleged commercial health insurance markets. *See* Compl. ¶ 7, 31-32.

[REDACTED]

³⁵ *Accord, e.g.,* Ex. 23 at BLUECROSSMI-10-002462 (BLUECROSSMI-10-002455-65) ([REDACTED] (emphasis added); Ex. 24 at BLUECROSSMI-08-018208 (BLUECROSSMI-08-018205-211) ([REDACTED] (emphasis added).

³⁶ *See, e.g.,* Ex. 25 (BLUECROSSMI-E-0075896-97) [REDACTED] . *See also* Ex. 26 at BLUECROSSMI-E-0124256 (BLUECROSSMI-E-0124248-61) ([REDACTED]

[REDACTED]

[REDACTED] Ex. 27 (BLUECROSSMI-E-0053666-68).³⁷

[REDACTED]³⁸

[REDACTED]³⁹

[REDACTED]

[REDACTED]

[REDACTED] For example, from 2001 to 2006, Kevin Seitz held the position of President and CEO of BCN while also holding the position of BCBSM Senior Vice President of Subsidiary Operations.⁴⁰ He later moved to a position at BCBSM overseeing BCBSM's

³⁷ [REDACTED]

[REDACTED] Ex. 28 (BLUECROSSMI-E-0092284-86 at 86).

[REDACTED] See *id.*

³⁸ See Ex. 29 (BLUECROSSMI-E-0124233) [REDACTED]

[REDACTED] Ex. 25 (BLUECROSSMI-E-0075896-97)

³⁹ [REDACTED]

[REDACTED] Ex. 30 (BLUECROSSMI-E-0109996-99, at 97). Plaintiffs' Complaint challenges that MFN. Compl. ¶ 39(h).

⁴⁰ See Ex. 31, <http://www.mibcn.com/about/corporate/historyHighlights.shtml>; http://www.mibcn.com/pr/pr_09-29-2006_31583.shtml (Press Release, *Blue Cross Blue Shield of Michigan Names Seitz as Executive Vice President of Health Care Value Enhancement and Carlson as President and CEO of Blue Care Network*, Sept. 29, 2006).

hospital contracting. [REDACTED]

[REDACTED] See, e.g., Ex. 32 at BLUECROSSMI-03-000718 (BLUECROSSMI-03-000718-19) ([REDACTED]); Ex. 33 at BLUECROSSMI-99-050881 (BLUECROSSMI-99-050881-82) ([REDACTED]). Plaintiffs' Complaint challenges that MFN. Compl. ¶¶ 39, 47.

In short, BCBSM's relevance objection is not sustainable given that (1) BCN is covered by a number of the MFN clauses at issue, (2) compliance with MFN clauses depends on aggregate payments to BCBSM and BCN, (3) BCBSM and BCN engage in substantial joint marketing efforts, and have common financial, market share, and profitability goals, and (4) key BCBSM and BCN personnel substantially overlap. Here, parent and subsidiary operate as a single entity in selling commercial insurance, and the subsidiary's conduct and market position are basic issues in this case.

3. Production of BCN Documents Does Not Impose an Undue Burden

The production of the BCN documents will not impose an undue burden on BCBSM. BCBSM has provided only unsupported and conclusory claims in support of its objection. See *John B. v. Goetz*, No. 3:98-0168, 2010 U.S. Dist. LEXIS 8821, at *191 (M.D. Tenn. Jan. 28, 2010) (citing *Tarleton v. Meharry Med. Coll.*, 717 F.2d 1523, 1534 n.4 (6th Cir. 1983)) ("the party asserting an undue burden is in the better position to explain what the undue burden is"); *Bricklayers Pension Trust Fund-Metropolitan Area v. Everlast Masonry*, No. 09-cv-11290, 2009 WL 3837147, *1 (E.D. Mich., Nov. 16, 2009)

(overruling undue burden objections when party resisting discovery “provided no specific information to support the objections”).

In addition, in an effort to resolve BCBSM’s concern, plaintiffs proposed a compromise that significantly reduced BCBSM’s obligation to produce BCN documents. Plaintiffs’ motion is limited to their compromise position, and seeks BCN documents responsive only to Requests 8-27 and 42 of Plaintiffs’ Second Request. These requests seek documents relating to MFNs, including the competitive effects of MFNs, hospital contracting, competition, competitors, and geographic markets, all of which are relevant to this matter.⁴¹ Plaintiffs agreed to make nine requests (Requests 33-41) inapplicable to BCN, and limited the scope of search for nine others (Requests 8, 12, 13, 14, 18, 19, 20, and 21).⁴² By doing so, plaintiffs have addressed BCBSM’s conclusory burden objection.

For Requests 8, 12, and 18, plaintiffs agreed that BCBSM need search the hard copy and electronic files (including email) of only three BCN custodians, Jeanne Carlson, Kevin Klobucar, and Allison Pollard. *See id.* Plaintiffs limited the scope of search for Requests 13 and 14 to the hard copy and electronic files (including email) of those BCN personnel responsible for hospital contracting. *See id.* Plaintiffs sought a proposal from BCBSM on how the scope of search for documents responsive to Request 19 (relating to

⁴¹ Requests 8-11 and 17 seek documents relating to MFNs; Requests 12-16 and 22 seek documents relating to hospital contracting; Requests 18-19, 23-24, and 27 seek documents relating to competition and competitors; Requests 20-21 and 23-25 seek documents relating to geographic markets; Requests 20-21, 17-18, and 26 seek documents relating to the competitive effects of the MFNs; and Request 42 seeks documents relating to data storage. *See Ex. 1* (Plaintiffs’ Second Request).

⁴² *See Ex. 8* (Letter from A. Fitzpatrick to A. Cummings dated Nov. 30, 2011).

competition and competitors) and Requests 20 and 21 (relating to geographic markets) could reasonably be limited, but BCBSM refused to make a proposal.

Requests 15, 16, 17, 22, 23, 24, 25, 26, 27, and 42 do not require a broad search of all BCN documents for responsive material. Rather, they seek documents that BCBSM should be able to collect from a few identifiable locations. For example, Requests 15, 16, and 17 seek copies of contracts between BCN and Michigan hospitals and hospital systems, which BCBSM asserts exist,⁴³ and should be easily located in BCN's contracting files. Requests 22 and 23 are limited to "documents sufficient to show" BCN's annual update factor and underwriting policies and should be easily located in BCN's underwriting department.

In contrast, Requests 9, 10, and 11 seek documents related to MFNs, and should not be limited. Those requests seek documents that are central to plaintiffs' claims, which challenge BCBSM's use of MFNs as anticompetitive. In any case, BCBSM has indicated that it has already identified those BCN personnel who might have documents relating to MFNs and has further represented that all BCN documents discussing the use of MFNs were produced pursuant to the Civil Investigative Demand ("CID") process during the United States' investigation preceding the complaint.⁴⁴ If BCBSM's representation is correct, BCBSM will be able to limit much of its search for documents responsive to Requests 9, 10, and 11 to BCN documents created after BCBSM collected BCN documents to respond to the CID. If BCBSM's representation is incorrect, BCBSM

⁴³ Ex. 5 (Letter from A. Cummings to A. Fitzpatrick dated Nov. 9, 2011).

⁴⁴ See Exhibit 9 at 4-5 (Letter from A. Cummings to A. Fitzpatrick dated Jan. 6, 2012) (stating that "upon consulting with BCN personnel who may reasonably be believed to have documents concerning or discussing the use of MFNs, those documents were already produced in response to CID No. 25965").

has already identified the likely locations of most responsive documents. In either case, given plaintiffs' agreement to eliminate many requests and limit the scope of search for many others, requiring BCBSM to search for and produce responsive documents relating to MFNs, hospital contracting, competition, competitors, and geographic markets does not impose any undue burden in light of the documents' relevance.

III. CONCLUSION

For the aforementioned reasons, the Court should grant Plaintiffs' motion to compel and order BCBSM to produce documents responsive to Plaintiffs' Second Request, including (1) all email responsive to Plaintiffs' Second Request by March 30, 2012, and (2) all responsive documents from its wholly-owned subsidiary, Blue Care Network by March 30, 2012.

Respectfully submitted,

/s/ with the consent of M. Elizabeth Lippitt

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Attorney for the United States

Dated: February 10, 2012

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury that on February 10, 2012 he served a copy of the foregoing PLAINTIFFS' SEALED MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS RESPONSIVE TO PLAINTIFFS' SECOND REQUEST FOR PRODUCTION OF DOCUMENTS AND ACCOMPANYING MEMORANDUM IN SUPPORT in accordance with this Court's policies and procedures for service of electronically filed documents.

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Exhibit 1

DEFINITIONS

All definitions in the Federal Rules of Civil Procedure apply to this Discovery Request. Each undefined term in this Discovery Request shall be interpreted in accordance with the definition in your industry and as used by your company. If no such definition exists, undefined terms in this Discovery Request shall be given their usual dictionary definition.

- A. The terms **“BCBSM,” “you,” “your company”** or **“the company,”** mean Blue Cross Blue Shield of Michigan, its parents, predecessors, divisions, subsidiaries (including the Blue Care Network), affiliates, partnerships and joint ventures, and all of its directors, officers, employees, agents, and representatives. The terms **“subsidiary,” “affiliate,”** and **“joint venture”** refer to any person in which the company holds at least a 50 percent interest, regardless of how the company’s interest is measured (*e.g.*, number of shares, degree of control, board seats, or votes).
- B. The terms **“and”** and **“or”** shall be construed either conjunctively or disjunctively as necessary to bring within the scope of each of the Requests all responses that might otherwise be construed to be outside of their scope.
- C. The term **“any”** means each and every.
- D. The terms **“agreement”** and **“contract”** mean any arrangement or understanding, formal or informal, oral or written, express or implicit, whether or not legally or equitably enforceable, between two or more persons, together with all documents modifying, amending or clarifying the agreement or contract.
- E. The terms **“commercial health insurance”** and **“commercial health insurance product”** mean any health insurance product that includes financial coverage for reimbursement to hospitals for the provision of inpatient and outpatient services. The term includes each commercial health insurance product offered (*e.g.*, HMO, POS, PPO, indemnity, ASO, and rental-network products). The term includes both group and individual commercial health insurance products, including all fully-insured and self-funded products. The term excludes (1) ancillary plans, such as dental and vision plans, sold solely to supplement inpatient and outpatient medical services, (2) plans offering solely Medicare, Medicare Advantage, or standalone prescription-drug benefit plans, and (3) Medicaid, workers’ compensation, and Tricare.
- F. The term **“commercial health insurer”** means any entity that provides commercial health insurance.
- G. The term **“commercial group health insurance”** means any commercial health insurance product sold to employers and other groups.

- H. The term “**commercial individual health insurance**” means any commercial health insurance product sold to individuals not participating in an employer or other group plan.
- I. The term “**communication**” means any provision, receipt, or exchange of any information or opinion, in any manner or form (including any oral, telephonic, written, or electronic communication).
- J. The term “**community-rated group**” means any commercial group health insurance product for which BCBSM bases premiums primarily on the demographic profile of the geographic region or the total population, with allowance for the group's demographic information such as age and industry.
- K. The term “**Complaint**” means the Complaint filed in this case by the United States and the State of Michigan on October 18, 2010 in the Eastern District of Michigan, Case No. 2:10-cv-14155-DPH-MKM.
- L. The term “**contract**” means any agreement, arrangement or understanding, formal or informal, oral or written, whether or not legally or equitably enforceable, between two or more persons.
- M. The term “**discussing**” means analyzing, constituting, summarizing, reporting on, considering, recommending, setting forth, or describing a subject. The term includes documents that contain reports, studies, forecasts, analyses, plans, proposals, evaluations, recommendations, directives, procedures, policies, or guidelines regarding a subject.
- N. The term “**document**” is synonymous in meaning and scope to that term in Federal Rule of Civil Procedure 34(a)(1)(A). The term includes electronically stored information, including all electronic communications (*e.g.*, emails and attachments), files, data and databases. The term includes each copy that is not identical to any other copy.
- O. The term “**experience-rated group**” means any commercial group health insurance product for which BCBSM bases prices and/or premiums primarily upon the group's future medical costs and medical expense history.
- P. The term “**fully insured group**” means any commercial group health insurance product for which BCBSM, and not the employer or other group, bears the majority of the financial risk that medical claims may exceed projected claims.
- Q. The terms “**hospital,**” “**hospital system,**” “**Michigan hospital,**” and “**Michigan hospital system**” mean any general acute-care hospital located in Michigan.
- R. The term “**including**” means including but not limited to.

- S. The terms “**MFN**” and “**MFN provision**” mean any actual, proposed, or contemplated most favored nations, most favored discount, or most favored pricing provision in any BCBSM hospital agreement. The term includes any actual, proposed or contemplated BCBSM policy, practice, or contractual provision that relates BCBSM payment rates to any hospital to the rates paid to that hospital by any other health insurer, or vice versa, however such policy, practice, or contractual provision is denominated.
- T. The term “**MHA**” means the Michigan Health and Hospital Association, and all of its directors, officers, employees, agents, and representatives.
- U. The term “**person**” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or trust. The term includes BCBSM.
- V. The term “**plans**” means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized, authorized, or adopted.
- W. The term “**relating to**” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.
- X. The term “**Relevant Geographic Area**” means each of the following 17 geographic markets alleged in Paragraph 28 of the Complaint:
1. The western and central Upper Peninsula (Alger, Baraga, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Marquette, Ontonagon and Schoolcraft Counties)
 2. The Lansing MSA (Ingham, Eaton and Clinton Counties)
 3. The Alpena area (Alpena and Alcona Counties)
 4. The Traverse City MiSA (Benzie, Grand Traverse, Kalkaska and Leelanau Counties)
 5. The Thumb area (Huron, Sanilac and Tuscola Counties)
 6. The Detroit MSA (Wayne, Oakland, Macomb, Livingston, St. Clair and Lapeer Counties)
 7. The Grand Rapids MSA (Kent, Ionia, Barry and Newaygo Counties)
 8. The Flint MSA (Genesee County)
 9. The Kalamazoo MSA (Kalamazoo and Van Buren Counties)
 10. The Saginaw MSA (Saginaw County)
 11. The Alma MiSA (Grapetown County)
 12. The Midland MiSA (Midland County)
 13. Allegan County
 14. Iosco County
 15. Montcalm County
 16. Osceola County
 17. St. Joseph County

- Y. The term “**self-funded group**” means any commercial group health insurance product for which the employer or group bears at least a majority of the financial risk that medical claims may exceed projected claims for covered health care services provided to the group’s members.

INSTRUCTIONS

- A. In addition to the specific instructions below, these Document Requests incorporate the instructions set forth in Federal Rule of Civil Procedure 34.
- B. BCBSM does not need to re-submit documents that BCBSM submitted to the Department of Justice pursuant to Civil Investigative Demands #25793, 25887 or 25965.
- C. Unless otherwise specified, each Request requires the company to submit all responsive documents that were created, modified, or received by the company, from January 1, 2005 to June 30, 2011. Each Request also incorporates the obligation under Federal Rule of Civil Procedure 26(e) to supplement the response. All references to year refer to calendar year. If any document is undated and the date of its preparation cannot be determined, the document shall be produced if otherwise responsive to these Requests.
- D. These Requests seek documents relating to or containing information, at least in part, about Michigan or any part of Michigan, even if not so specified.
- E. The Plaintiffs will accept production of business documents as Summation load files, consistent with the manner in which documents were produced during the pre-Complaint investigation. Electronic documents, such as Excel or PowerPoint, should be produced in their native format with a Bates-numbered tiff image of the first page. Each electronic media device must be labeled to identify the contents of the device, the source of the information, and the document control numbers of those documents.
- F. Identify any search terms or search methodologies you intend to use before conducting a search for any electronically stored information, so that the parties can confer in good faith in advance of the search.
- G. If you intend to use any de-duplication software or services when collecting or reviewing electronically stored information in response to this Discovery Request, contact the Plaintiffs in advance to discuss the manner in which the company intends to use de-duplication software or services.
- H. Any documents that are withheld in whole or in part based on a claim of privilege shall be assigned document control numbers with unique consecutive numbers for each page of

each document. For purposes of this instruction, each attachment to a document shall be treated as a separate document and separately logged, if withheld, and cross referenced, if produced. For each document, the company shall provide a privilege log that includes a statement of the claim of privilege and sufficiently describes the facts justifying withholding the document to allow the Plaintiffs to assess the privilege claim. You are encouraged to propose categorical limitations to exclude certain categories of privileged documents from the log.

DOCUMENT REQUESTS

8. All documents, prepared since January 1, 2005, from **BCBSM's** central files and from the files of the 16 custodians identified below, discussing any **MFN provision** with any **Michigan hospital**, or **MFN provisions** generally with **Michigan hospitals**, including:
- a. discussions or negotiations with any **Michigan hospital** or with the **MHA** relating to **MFNs** or reimbursement rates;
 - b. actual or contemplated strategies, purposes, advantages, or disadvantages to **BCBSM** from using any **MFN**;
 - c. any actual or possible savings or other benefits or efficiencies from any **BCBSM MFN provision**;
 - d. any actual or possible effect of any **MFN** on the **hospital** reimbursement rates paid by **BCBSM** or any other **commercial health insurer**; or
 - e. any **hospital's** compliance, non-compliance, waiver of compliance, or strategies for complying with a **BCBSM MFN**.

Custodians:

(1)	Daniel Loepp	CEO
(2)	Kevin Klobucar	BCN CEO
(3)	Sue Barkell	Senior Vice President
(4)	Michael Schwartz	Consultant; formerly Senior VP
(5)	Tom Simmer	Senior Vice President
(6)	Lynda Rossi	Senior Vice President
(7)	Mark Johnson	Vice President
(8)	Mary Smith	Vice President
(9)	Gary Gavin	Vice President
(10)	Kathryn Levine	Vice President
(11)	John Dunn	Vice President
(12)	Martha Spenny	Director
(13)	Kelley Monterusso	Director
(14)	Austin Wallace	former Manager
(15)	Eric Kropfreiter	Senior Analyst
(16)	Connie Hoveland	Provider Contracting

9. For any **Michigan hospital** with which **BCBSM** has had an **MFN** at any time since January 1, 2004, all documents discussing any **Michigan hospital's** actual or possible rate increase to any **commercial health insurer** other than **BCBSM**, including the reasons for any rate increase.

10. All documents, since January 1, 2005, relating to any external communication by **BCBSM** or its attorneys, including any communication with the **MHA**, any **Michigan hospital**, Consortium Health Plans, the Blue Cross Blue Shield Association (BCBSA), or any BCBSA licensee other than **BCBSM**, or the Michigan Office of Financial and Insurance Regulation, discussing **MFN provisions** included in, applying to, or that may apply to any contract with any **Michigan hospital**, including:
 - a. the legality of any **BCBSM MFN provision**;
 - b. **BCBSM's** actual or possible enforcement of any actual or contemplated **BCBSM MFN provision**;
 - c. any actual or contemplated indemnification or hold harmless provision relating to any **BCBSM MFN provision**;
 - d. this lawsuit, the possibility of this lawsuit, or the investigation into **BCBSM's MFN provisions** preceding this lawsuit; or
 - e. any other actual or potential lawsuit relating to **BCBSM's** use of **MFN provisions** in any **Michigan hospital** contracts.

11. All documents discussing how **BCBSM's** use of **MFNs** may relate to:
 - a. **BCBSM's** actual or claimed "social mission," or **BCBSM's** actual or claimed role or obligations as "insurer of last resort," as those terms are used in **BCBSM's** initial disclosures of July 15, 2011; or
 - b. any other state regulations unique to **BCBSM**.

12. All documents, prepared since January 1, 2005, from **BCBSM's** central files and from the files of the 16 custodians identified in Request 8, discussing negotiations, contracting, or contracting strategy with any **Michigan hospital**, including:
 - a. actual or estimated reimbursement rates that any **Michigan hospital** charges to

- BCBSM** or any other **commercial health insurer**;
 - b. any **BCBSM** competitive advantages or disadvantages in the purchase or sale of **hospital** services in any geographic area in Michigan;
 - c. any **Michigan hospital's** actual or potential termination or notice of termination of a contract with **BCBSM** or any other **commercial health insurer**; or
 - d. competition in the purchase of **hospital** services.

- 13. All documents relating to all **BCBSM** contract negotiations, since January 1, 2006, with the following **Michigan hospital systems** (including individual hospitals within each system) and individual **Michigan hospitals**, including their predecessors:
 - a. Oakwood Healthcare;
 - b. Henry Ford Health;
 - c. Detroit Medical Center;
 - d. Trinity Health;
 - e. McLaren Health;
 - f. University of Michigan;
 - g. Spectrum Health;
 - h. Northern Michigan Regional Hospital;
 - i. Allegiance Health;
 - j. Bronson Methodist Hospital;
 - k. Lakeland HealthCare; and
 - l. Sturgis Hospital.

- 14. All documents, since January 1, 2004, not previously produced, relating to all **BCBSM** contract negotiations with the following **Michigan hospital systems** (including individual hospitals within each system) and individual **Michigan hospitals**, including their predecessors:
 - a. William Beaumont Hospitals;
 - b. Marquette General Hospital;
 - c. Metro Health;
 - d. Covenant Medical Center; and
 - e. Munson Medical Center.

- 15. One final, signed version of each **BCBSM** contract with any **Michigan hospital** or

Michigan hospital system that was executed since April 13, 2010.

16. One final, signed version of each BCBSM contract currently in effect with each of the following **Michigan hospitals** or **Michigan hospital systems**:
 - a. Allegiance Health System
 - b. Alpena Regional Medical Center
 - c. Bixby Medical Center
 - d. Central Michigan Community Hospital
 - e. Cheboygan Memorial Hospital
 - f. Chippewa County War Memorial Hospital
 - g. Community Health Center of Branch County
 - h. Dickinson County Healthcare System
 - i. Hayes Green Beach Memorial Hospital
 - j. Herrick Memorial Hospital
 - k. Hillsdale Community Health Center
 - l. Huron Medical Center
 - m. Mercy Memorial Hospital
 - n. Northern Michigan Regional Hospital
 - o. Portage Health System
 - p. Schoolcraft Memorial Hospital
 - q. Spectrum Health (United, Kelsey, and Reed City Hospitals)
 - r. William Beaumont Hospitals
 - s. Zeeland Community Hospital

17. One final, signed copy of the contract between **BCBSM** and each of the following **Michigan hospitals** that immediately preceded the first contract containing an MFN provision entered between **BCBSM** and that **hospital**, for the following **Michigan hospitals**:
 - a. Allegiance Health
 - b. Alpena Regional Medical Center
 - c. Marlette Regional Hospital
 - d. Sparrow Hospital
 - e. Spectrum Health (Butterworth/Blodgett, United, Kelsey, Reed City)
 - f. Cheboygan Memorial Hospital
 - g. Community Health Center of Branch County
 - h. Covenant Medical Center
 - i. Herrick Medical Center

- j. Mercy Health Partners (Lakeshore)
 - k. Metro Health Hospital
 - l. Mid-Michigan (Midland, Clare, Gladwin)
 - m. Munson Medical Center
 - n. Pennock Hospital
18. All documents, prepared since January 1, 2005, from **BCBSM**'s central files and from the files of the 16 custodians identified in Request 8, discussing competition in the sale of health insurance in any geographic area in Michigan, including:
- a. any **BCBSM** competitive advantage or disadvantage;
 - b. business plans, strategic plans, and marketing plans that discuss any **commercial health insurance products** or any strategies of **BCBSM** or any other **commercial health insurer**;
 - c. market shares for any **commercial health insurer or product**; or
 - d. **BCBSM**'s or any other **commercial health insurer**'s pricing strategies or policies.
19. All documents discussing, for any **Michigan hospital**:
- a. any **BCBSM** discount differential or discount advantage, including any factors causing the discount differential or discount advantage;
 - b. how **BCBSM**'s **hospital** reimbursement rates or discounts compare to those of any other **commercial health insurer**;
 - c. any analysis of **hospital** discount differentials performed by any consulting firm or other outside group, including Consortium Health Plans, Blue Cross Blue Shield Association, Hewitt, McKinsey, and Milliman;
 - d. how **BCBSM**'s hospital rates or discounts affect **BCBSM**'s overall costs or expenses; or
 - e. how any **BCBSM** advantage or disadvantage in **hospital** rates or discounts affects or causes any **BCBSM** advantage or disadvantage in overall costs or expenses.
20. All documents discussing the benefits or advantages or lack of benefits or disadvantages, for **BCBSM** or any other **commercial health insurer**, of including any **Michigan hospital or hospitals** in its **commercial health insurance** provider network, including, but not limited to;

- a. the actual or possible impact of termination or de-participation of a **hospital** from the provider network on **BCBSM** or any other **commercial health insurer's hospital** rates, medical expenses, or the marketability of any **commercial health insurance products**;
 - b. any actual or potential obstacles to **BCBSM** or any other **commercial health insurer** having its enrollees use any **hospital** other than the (potentially) terminating or de-participating **hospital**; or
 - c. any restriction or limitation, including any statute or regulation, on the ability of **BCBSM** or any other **commercial health insurer** to de-participate with a **hospital** or terminate a **hospital** from its provider network.
21. All documents discussing any actual or contemplated practice, mechanism, or arrangement, including any steering or tiering arrangement, by **BCBSM** or any other **commercial health insurer**, to incentivize or encourage its **commercial health insurance** members to use more efficient or lower-cost **Michigan hospitals** instead of less efficient or higher-cost **Michigan hospitals**, including any actual or possible obstacles or disadvantages to implementing any such practice, mechanism, or arrangement.
22. Documents sufficient to show, separately for each year from 2004 to 2010, **BCBSM's**
- a. average annual update factor or annual rate update for all **Michigan hospitals**, and how the update was calculated; or
 - b. annual update factor or annual rate update for each **Michigan hospital**.
23. Documents sufficient to show all of **BCBSM's** policies, procedures and guidelines, in effect at any time since January 1, 2007, for pricing and underwriting **commercial health insurance products**, for each of the following segments of **commercial health insurance** customers:
- a. **self-funded group** customers;
 - b. **experience-rated group** customers;
 - c. **community-rated group** customers; or
 - d. **commercial individual** customers.

24. Documents, including all minutes, summaries, reports, presentations and analyses, since January 1, 2006, discussing pricing recommendations, pricing analyses, pricing decisions, and any factors considered in price changes, for any of the following segments of **commercial health insurance** customers:
- a. **self-funded group** customers;
 - b. **experience-rated group** customers;
 - c. **community-rated group** customers; or
 - d. **commercial individual** customers.
25. All documents, since January 1, 2006, relating to **BCBSM's** or Blue Care Network's consideration of, and any reasons for or against, any actual or contemplated creation of new geographic rating regions, division of existing geographic rating regions, or changes to the boundaries of geographic rating regions, for pricing its **commercial group health or individual health insurance products**, including documents discussing **BCBSM** dividing its:
- a. southwest rating region (region #3) and creating a new geographic rating region in southwest Michigan; or
 - b. geographic rating region for the northern lower peninsula into two or more regions.
26. For each **Michigan hospital** system or **hospital** with which **BCBSM** has negotiated reimbursement rates since January 1, 2006, all documents discussing how any actual or proposed change in **hospital** reimbursement rates has affected or may affect the prices, fees or premiums that **BCBSM** or any other **commercial health insurer** may charge any of its **fully-insured** or **self-funded commercial health insurance** customers.
27. For each of **BCBSM's** five largest **fully insured group** customers and five largest **self-funded group** customers in each **relevant geographic area** (measured by the number of group members residing in that **relevant geographic area**), all documents discussing any:
- a. actual or possible changes to prices or premiums charged by **BCBSM**;
 - b. **hospital** rates or discounts, medical expenses, or administrative fees;

- c. comparison of **BCBSM's hospital** discounts or administrative fees to those of any other **commercial health insurer**; or
 - d. any actual or possible bids by any **commercial health insurer** other than **BCBSM**, or other competitive factors considered by any commercial health insurer in setting prices or fees.
28. All documents, since January 1, 2005, sent to or received from McKinsey or any other consulting firm, discussing strategy or competition in the sale of **commercial health insurance** or in the sale or purchase of **hospital** services, including **Michigan hospital** contract negotiations and **hospital** reimbursement rates.
29. All documents relating to communications by BCBSM with brokers, consultants, or agents that represent employers or other **commercial group health insurance** customers, including documents relating to Managing Agents meetings, Managing Agents principals meetings, Broker meetings, Agent Councils or Regional Agent Councils, discussing:
- a. any **BCBSM MFN provision**;
 - b. **hospital** rates or discounts;
 - c. how **hospital** rates or discounts affect the price of **commercial health insurance**;
or
 - d. competition in the sale of commercial health insurance.
30. For each of the insurance providers licensed to sell health insurance in Michigan, identified in Exhibit 2 of **BCBSM's** Initial Disclosures of July 18, 2011, all documents discussing:
- a. that company's market share in the sale of **commercial group health or commercial individual health insurance** in all or any part of Michigan; or
 - b. possible or actual competition from that company's sale of **commercial group health or commercial individual health insurance** in all or any part of Michigan.
31. All documents discussing any **BCBSM** actual or contemplated response to any actual or

contemplated competitive threat from any **commercial health insurer** in the sale of **commercial health insurance**, including any such response to any such threat from:

- a. Priority Health (including documents relating to the Priority Health Market Share Initiative and the Priority Health SWAT Team);
- b. Aetna or Cofinity/PPOM (including documents relating to any war gaming exercises);
- c. other national **commercial health insurers**, including United, Cigna, and Humana;
- d. other Michigan **commercial health insurers**, including Health Alliance Plan, PHP of Mid-Michigan, Health Plus, and McLaren Health Plan; or
- e. any of the companies identified in Exhibit 2 of **BCBSM**' Initial Disclosures of July 18, 2011.

32. All transcripts of depositions or trial testimony since January 1, 2004, and all affidavits or declarations executed since January 1, 2004, of any **BCBSM** employee, representative or witness, that discuss:

- a. **Michigan hospital** contracts, contract terms, or contract negotiations;
- b. **hospital** rates or discounts, including how hospital rates or discounts affect prices charged for commercial health insurance products;
- c. competition in the purchase or sale of **hospital** services; or
- d. competition in the sale of **commercial health insurance**.

33. All documents prepared for, reporting on, memorializing, or discussing any meetings, recommendations or decisions of any of the following **BCBSM** committees, work groups, or meetings:

- a. Peer Group 5 work group, Peer Group 5 advisory group, or any other Peer Group 5 group;
- b. Hospital Reimbursement Strategy Work Group;
- c. (Outpatient) Market Based Community Pricing Work Group;
- d. Technical Advisory Group formed to discuss issues relating to Michigan hospital contracting or negotiations;
- e. Hospital contracting staff's monthly or other periodic negotiation status meetings with senior leadership;
- f. "Hospital update" meetings; or
- g. Senior Leadership Oversight Committee formed during negotiations with any Michigan hospital.

34. One complete set of minutes for each meeting since April 13, 2010 of the:
 - a. PHA Advisory Committee; or
 - b. BCBSM Contingent to the PHA Advisory Committee.

35. For each meeting of the PHA Advisory Committee and each meeting of the BCBSM Contingent to the PHA Advisory Committee, since January 1, 2004, one complete set of meeting packets or meeting materials provided to committee members, including presentations, reports, attachments, and assignments logs.

36. For each meeting of the Staff Liaison Group since January 1, 2004, one complete set of:
 - a. meeting summaries, other than the previously produced meeting summaries listed in Appendix 36; or
 - b. meeting packets or meeting materials provided to members of the Group, including presentations, reports, attachments, and assignments logs.

37. One unredacted copy of each document identified in Appendix 37 that **BCBSM** redacted or withheld from production in response to Civil Investigative Demand # 25965.

38. All attachments for linked files, such as spreadsheets, identified in Appendix 38, that were not attached to the source files for the related documents that **BCBSM** previously produced in response to Civil Investigative Demand # 25965.

39. Documents sufficient to show any search terms used by **BCBSM** in its search for or review of electronic documents in response to this Second Request for Production of Documents, Plaintiffs' First Request for Production of Documents, or Civil Investigative Demand # 25965.

40. Documents sufficient to describe **BCBSM**'s document retention, destruction, deletion, storage, archiving and backup policies, procedures, and practices, in effect at any time since January 1, 2004, including:
 - a. all documents discussing the policies, procedures, and practices in effect at any time since January 1, 2004 for separated or retired employees;
 - b. one copy of **BCBSM**'s Records Management Policy dated July 16, 2007, and one copy of each prior Records Management Policy in effect at any time since January 1, 2007; or
 - c. all documents discussing retention policies and periods for all categories of documents generated by the hospital contracting or hospital relations departments.

41. All documents discussing retention, preservation, deletion or destruction of documents, including emails, of:
 - a. Kevin Seitz;
 - b. Douglas Darland;
 - c. Michael Schwartz;
 - d. Austin Wallace; and
 - e. each other **BCBSM** management employee who had any responsibility for or oversight over hospital contracting or negotiations, at any time since January 1, 2005, who separated or retired from **BCBSM** or changed departments within **BCBSM**.

42. Documents sufficient to show, for the **BCBSM** Enterprise Data Warehouse(s), Business Intelligence Data Warehouse(s), and the ClaimsQuest Data Warehouse(s) used for reporting and analysis of rates, discounts, claims, billing, enrollment, and eligibility, the following information:
 - a. data dictionaries, including names and descriptions of all tables and fields, data types, and designation of primary keys;
 - b. documentation sufficient to identify the logical data structure, such as entity relationship diagrams;
 - c. manuals and other documents provided to end users to facilitate understanding and use of the data warehouse(s); or
 - d. documents sufficient to identify the person responsible for operating or maintaining the data warehouse(s).

Respectfully submitted,

s/ Amy R. Fitzpatrick

Amy R. Fitzpatrick
Barry Joyce
Trial Attorneys

United States Department of Justice
Antitrust Division
450 Fifth Street N.W., Suite 4100
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Attorneys for Plaintiffs United States of America

s/ M. Elizabeth Lippitt

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Attorney for Plaintiff State of Michigan

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

_____)	
UNITED STATES OF AMERICA and the)	
STATE OF MICHIGAN,)	
)	
) Plaintiffs,)	
)	Civil Action No.
) v.)	2:10-cv-1455-DPH-MKM
)	Hon. Denise Page Hood
BLUE CROSS BLUE SHIELD OF)	Magistrate Judge Mona K. Majzoub
MICHIGAN, a Michigan nonprofit)	
healthcare corporation,)	
)	
) Defendant.)	
_____)	

CERTIFICATE OF SERVICE

I certify that on August 2, 2011, I served the foregoing Second Request for Production of Documents from Defendant Blue Cross Blue Shield of Michigan by electronic mail on:

D. Bruce Hoffman
Todd M. Stenerson
Ashley Cummings
Jonathan Lasken
Hunton & Williams LLP
2200 Pennsylvania Avenue, N.W.
Washington, DC 20037
Attorneys for Defendant Blue Cross Blue Shield of Michigan

s/ Amy R. Fitzpatrick
Amy R. Fitzpatrick

United States Department of Justice
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Attorney for Plaintiff United States of America

Exhibit 2



U.S. Department of Justice

Antitrust Division

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September 16, 2011

VIA EMAIL

Ashley Cummings
Bank of America Plaza, St. 4100
600 Peachtree Street, N.E.
Atlanta, Georgia 30308

Re: Plaintiffs' Second Request for Production of Documents - Proposed Search Terms
United States and State of Michigan v. Blue Cross Blue Shield of Michigan
Case No. 2:10-cv-14155-DPH-MKM (E.D. Mich.)

Dear Ashley:

The purpose of this letter is to provide Blue Cross with suggested search terms for use in searching for documents responsive to Plaintiffs' Second Request for Production of Documents. We understand that Blue Cross will be using search terms to identify email and email attachments responsive to Plaintiffs' Second Request for Production of Documents. If Blue Cross intends to use search terms for any other part of its search and production, please let me know. In addition, plaintiffs understand that Blue Cross will also search all prior CID custodians using any new search terms agreed upon.

Plaintiffs view the list below as a starting point in reaching agreement on a comprehensive final search term list. As I have expressed to you on the telephone, plaintiffs believe that Blue Cross and its personnel are in the best position to identify responsive emails and to suggest meaningful search terms that may help identify responsive emails. This is because they are the most knowledgeable about the language, acronyms, and other common terms used in their business. Plaintiffs, therefore, look forward to considering additional suggestions by Blue Cross. Similarly, plaintiffs will continue to try to develop other relevant search terms.

The proposed search terms are listed below in general subject-matter groupings. Where possible, plaintiffs have suggested connectors and other limitations that may

Ashley Cummings, Esq.
September 16, 2011
Page 2 of 4

reduce the risk of over-inclusive results. We welcome additional suggestions in this regard. Plaintiffs suggest that searches be constructed so that every search term run will provide results that include all permutations of words containing that combination of letters. For example, the search term “discount” should result in finding all documents that contain derivations such as “discounts,” “discounting,” “discounted.” As another example, a search for “Seitz” should yield all documents that contain the email address “kseitz@bcbsm.com.” Also, no word or phrase should be case sensitive.

Also included in the list below are all search terms used on prior CID custodians that you identified in your September 2, 2011 letter.

MFN-related Search Terms

most favored nation; most favored discount; most favored price; most favored customer; most-favored nation; most-favored discount; most-favored price; most-favored customer; MFN; MFD; MFP; MFC; favorab*; favored; discount; differential; spread; parity; attest*; violat*; comply; complian*; pricing; antitrust; anti-trust; ATR; hold harmless; indemnif*; DOJ; justice

General Competition-related Search Terms

business plan; business strategy; sales plan; sales strategy; market share; market plan; market strategy; market objective; market study

compet*; strateg*; threat*; streng*; weak*; SWOT; domina*; monopol*; market w/5 share; advantage; disadvantage; ent* w/5 market; exit w/5 market; next w/2 best; regulat*; market w/5 power; group w/5 market; individ* w/5 market; penetrat* w/5 market; compet* w/5 aggressi*

Search Terms re: Hospitals and Hospital Contracting

LOU; LOA; letter of understanding; letter of agreement; side letter; steer; tier

hospital OR facility OR provider w/5 network; hospital OR facility OR provider w/5 critical; hospital OR facility OR provider w/5 leverage; hospital OR facility OR provider w/5 alternative; hospital OR facility OR provider w/5 preferred; hospital OR facility OR provider w/5 dominant; hospital OR facility OR provider w/5 must have; hospital OR facility OR provider w/5 significant; hospital OR facility OR provider w/5 strategic; hospital OR facility OR provider w/5 sole; hospital OR facility OR provider w/5 remote; hospital OR facility OR provider w/5 access; hospital OR facility OR provider w/5 narrow; hospital OR facility OR provider w/5 contract; hospital OR facility OR provider w/5 negotiat*;

Ashley Cummings, Esq.
September 16, 2011
Page 3 of 4

hospital OR facility OR provider w/5 depar*; hospital OR facility OR provider w/5 de-par*; hospital OR facility OR provider w/5 terminat*; hospital OR facility OR provider w/5 reimburs*; hospital OR facility OR provider w/5 cost per case; hospital OR facility OR provider w/5 CPC; hospital OR facility OR provider w/5 capacity; hospital OR facility OR provider w/5 marketab*

MHA; Michigan Hospital Association; Michigan Health w/3 Hospital Association; PHA; Model; peer group; PG5; work group; Schonfeld; Litka; Faja; Spence*

Marquette; Marquette General; MGH*; dave@healthdave.com; Muller; Alpena; AGH; ARMC; Lanciotti; Bjella; Sparrow; Wilkerson; Munson; MMC; Hepler; Leach; Ascension; St. John; Borgess; Genesys; St. Mary*; Saint Mary*; McGuire; Maryland; Taylor; Felbinger; Beaumont; Johnson; Herrick; Matzick; Matzik; Covenant; CMC; Gronda; Mid-Michigan; Mid Michigan; MidMichigan; Midland; Gratiot; Rodgers; Babinski; Metro Health; Susterich; Nykamp; Botsford; Doxtader; Dickinson; DCHS; Spectrum; Bronson

rating; rate; loss ratio; margin; premium; region; regional investment; benefit cost; profitab*; rating region Kalamazoo; rating region southwest Michigan

Search Terms re: Other Health Insurance Companies

Priority; United; UH*; Aetna; Cofinity; PPOM; HAP; Health Alliance Plan; PHP; Physicians Health Plan; Health Plus; Health+; Humana; Cigna; UPHP; McLaren; Assurant; MCare; Great West; Coventry; Grand Valley; Interplan; Multiplan; Trinity Health Plans; CareChoice*; Care Choice*; Upper Peninsula Health; Principal; [and other names of (or acronyms for) any commercial group health insurers or commercial individual health insurers known to Blue Cross].

Search Terms re: Geographic Markets Alleged

Marquette; Upper Peninsula; UP; Lansing; Alpena; Traverse; Thumb; Detroit; Grand Rapids; Kalamazoo; Flint; Saginaw; Midland; Gratiot; Osceola; Montcalm; Allegan; St. Joseph

Ashley Cummings, Esq.
September 16, 2011
Page 4 of 4

Other Search Terms

social mission; last resort; OFIR; office w/3 financial w/3 insurance; PA
350; P.A. 350; LARA

McKinsey; Hewitt; Milliman

Seitz; Kevin; kseitz@bcbsm.com; Schwartz; mschwartz@bcbsm.com;
awallace@bcbsm.com; Farrah; Mark

* * *

As I expressed to you earlier this week, plaintiffs are very interested in reaching an agreement on search terms quickly so that the search for and production of responsive email and attachments can begin.

In addition, as we also discussed, I would like to set a specific time to meet and confer regarding Blue Cross's objections and responses to Plaintiffs' Second Request for Production of Documents. In particular, plaintiffs believe a separate conference focused on Plaintiffs' Document Request No. 42 (relating to data) is important. When we last spoke you indicated that you would confer with others on your team and propose a date and time for such a conference. I have not yet heard from you regarding any proposed dates.

Please let me know if you have any questions.

Best regards,

/s/

Amy R. Fitzpatrick
Trial Attorney

cc: Elizabeth Lippitt

Exhibit 3

From: [Cummings, Ashley](#)
To: [Fitzpatrick, Amy](#)
Cc: [Lasken, Jonathan H.](#)
Subject: US v. BCBSM - Search Terms
Date: Friday, October 21, 2011 2:43:11 PM

Dear Amy:

Per our conversation yesterday, and as a starting point, here is a list of search terms proposed by the Department that are patently unworkable:

Favorab*
Favored
Discount
Differential
Spread
Comply
Complian*
Pricing
Business plan
Sales plan
Sales strategy
Compet*
Strateg*
Threat
Streng*
Weak*
Advantage
Disadvantage
Many of the "Hospital OR Facility OR Provider" strings
Model
Peer Group
PG5
Work group
Any stand-alone references to various hospitals, e.g., "Marquette" or "Alpena"
Rating
Rate
Margin
Premium
Region
Profitab*
Any stand-alone references to various insurers, particularly those whose names are also general terms, e.g., "Priority" or "United" or "Principal"
Any stand-alone location names in the absence of any narrowing term, e.g., "Detroit" or "Marquette" or "Upper Peninsula"
Social mission
Any stand-alone reference to McKenzie, Hewitt or Milliman
Mark

Certainly, this is not an exhaustive list, but you indicated this a list such as this could shape your own thinking as we are developing a counter-proposal. The central problem is that the Department's proposal is mostly search words that stand alone, without any limitation. And when we combined all of the proposed terms into

one search and ran a test, it pulled back over 64 million documents. We would appreciate receiving some workable suggestions on how to narrow and target these searches.

Sincerely,
Ashley



Ashley Cummings
Partner
acummings@hunton.com

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Exhibit 4



U.S. Department of Justice

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October 28, 2011

VIA EMAIL

Ashley Cummings
 Hunton & Williams LLP
 Bank of America Plaza, St. 4100
 600 Peachtree Street, N.E.
 Atlanta, Georgia 30308

Re: *United States and State of Michigan v. Blue Cross Blue Shield of Michigan*
Case No. 2:10-cv-14155-DPH-MKM (E.D. Mich.)

Dear Ashley:

As discussed earlier today, we have reviewed the search terms BCBSM identified as being potentially too broad. For most, I believe we have come up with workable solutions that should enable BCBSM to narrow the scope of the search results. Our proposals are set forth in a chart below.

In addition, as I mentioned on the telephone today, for terms such as “discount” and “differential” and “compet*” and “PG5” and “social mission” and stand-alone references to insurers such as United or Priority, we might agree to limit those terms to certain custodians. It would also be helpful to know how many documents each of those terms produces when run individually and whether BCBSM has the capability to run searches that exclude certain combinations (e.g., “differential” but NOT “differential diagnosis”).

Search Term	Proposal
Favorab*	favorab* w/5 rate or price or discount or pricing
Favored	favored w/5 discount or nation or price or rate or provider or insurer or hospital “most favored pricing”

Ashley Cummings, Esq.

October 28, 2011

Page 2 of 5

	“best price”
Discount	We might be able to limit to specific custodians.
Differential	We might be able to limit to specific custodians.
Spread	delete
Comply	delete
Complian*	delete
Pricing	We might be able to limit to specific custodians.
“Business plan”	We might be able to limit to specific custodians.
“Sales plan”	We might be able to limit to specific custodians.
“Sales strategy”	We might be able to limit to specific custodians.
Compet*	We might be able to limit to specific custodians.
Strateg*	strateg* w/5 hospital or facility or provider
Threat	threat w/50 streng* or weak*
Streng*	streng* w/50 threat or weak*
Weak*	weak w/50 threat or streng*
Advantage	<p>advantage w/5 compet*</p> <p>advantage w/5 Priority or United or UH* or Aetna or Cofinity or PPOM or HAP or “Health Alliance Plan” or PHP or “Physicians Health Plan” or “Health Plus” or Health+ or Humana or Cigna or UPHP or McLaren or Assurant or Coventry or Multiplan or “Trinity Health Plan*” or “Upper Peninsula Health” or Principal</p> <p>advantage w/5 Allegan or Allegiance or Alpena or Ascension or Borgess or Genesys or Providence or St. John or St. Joseph or St. Mary’s or Aspirus or Keweenaw or Ontonagon or Baraga or Beaumont or Bell or Botsford or Bronson or Caro or Charlevoix or Cheboygan or Clinton or “Branch County” or Watervliet or Covenant or Deckerville or Dickinson or “Eaton Rapids” or “Grand View” or “Harbor Beach” or “Hayes Green Beach” or “Helen Newberry” or Herrick or “Hills & Dales” or Huron or Ionia or Kalkaska or “Mackinac Straits” or Marlette or Marquette or McKenzie or “Memorial Medical Center” or “Mercy Health” or “Metro Health” or Mid-Michigan or Munising or Munson or Northstar or “Iron County” or Otsego or “Paul Oliver” or Pennock or Portage or Scheurer or Schoolcraft or Sheridan or “South Haven” or Sparrow or Spectrum or Blodgett or Butterworth or Kelsey or “Reed City” or “United Hospital” or “Three Rivers” or “West Shore” or Gerber</p>
Disadvantage	<p>disadvantage w/5 compet*</p> <p>disadvantage w/5 Priority or United or UH* or Aetna or Cofinity or PPOM or HAP or “Health Alliance Plan” or PHP or</p>

Ashley Cummings, Esq.

October 28, 2011

Page 3 of 5

	<p>“Physicians Health Plan” or “Health Plus” or Health+ or Humana or Cigna or UPHP or McLaren or Assurant or Coventry or Multiplan or “Trinity Health Plan*” or “Upper Peninsula Health” or Principal</p> <p>disadvantage w/5 Allegan or Allegiance or Alpena or Ascension or Borgess or Genesys or Providence or St. John or St. Joseph or St. Mary’s or Aspirus or Keweenaw or Ontonagon or Baraga or Beaumont or Bell or Botsford or Bronson or Caro or Charlevoix or Cheboygan or Clinton or “Branch County” or Watervliet or Covenant or Deckerville or Dickinson or “Eaton Rapids” or “Grand View” or “Harbor Beach” or “Hayes Green Beach” or “Helen Newberry” or Herrick or “Hills & Dales” or Huron or Ionia or Kalkaska or “Mackinac Straits” or Marlette or Marquette or McKenzie or “Memorial Medical Center” or “Mercy Health” or “Metro Health” or Mid-Michigan or Munising or Munson or Northstar or “Iron County” or Otsego or “Paul Oliver” or Pennock or Portage or Scheurer or Schoolcraft or Sheridan or “South Haven” or Sparrow or Spectrum or Blodgett or Butterworth or Kelsey or “Reed City” or “United Hospital” or “Three Rivers” or “West Shore” or Gerber</p>
Many of the "Hospital OR Facility OR Provider" strings	Please identify which strings are problematic. We will work on proposing some additional limitations.
Model	hospital or facility or provider w/5 model
“Peer Group”	hospital or facility or provider w/5 “peer group” “Peer Group 5”
PG5	We might be able to limit to specific custodians.
Work group	hospital or facility or provider w/5 work group
Any stand-alone references to various hospitals, e.g., "Marquette" or "Alpena"	hospital or facility or provider or health w/5 Marquette hospital or facility or provider or health w/5 Alpena If there are others that are problems, please let us know.
Rating	rating w/5 Priority or United or UH* or Aetna or Cofinity or PPOM or HAP or “Health Alliance Plan” or PHP or “Physicians Health Plan” or “Health Plus” or Health+ or Humana or Cigna or UPHP or McLaren or Assurant or Coventry or Multiplan or “Trinity Health Plan*” or “Upper Peninsula Health” or Principal rating w/5 Allegan or Allegiance or Alpena or Ascension or Borgess or Genesys or Providence or St. John or St. Joseph or

Ashley Cummings, Esq.

October 28, 2011

Page 4 of 5

	<p>St. Mary’s or Aspirus or Keweenaw or Ontonagon or Baraga or Beaumont or Bell or Botsford or Bronson or Caro or Charlevoix or Cheboygan or Clinton or “Branch County” or Watervliet or Covenant or Deckerville or Dickinson or “Eaton Rapids” or “Grand View” or “Harbor Beach” or “Hayes Green Beach” or “Helen Newberry” or Herrick or “Hills & Dales” or Huron or Ionia or Kalkaska or “Mackinac Straits” or Marlette or Marquette or McKenzie or “Memorial Medical Center” or “Mercy Health” or “Metro Health” or Mid-Michigan or Munising or Munson or Northstar or “Iron County” or Otsego or “Paul Oliver” or Pennock or Portage or Scheurer or Schoolcraft or Sheridan or “South Haven” or Sparrow or Spectrum or Blodgett or Butterworth or Kelsey or “Reed City” or “United Hospital” or “Three Rivers” or “West Shore” or Gerber</p>
<p>Rate</p>	<p>rate w/5 Priority or United or UH* or Aetna or Cofinity or PPOM or HAP or “Health Alliance Plan” or PHP or “Physicians Health Plan” or “Health Plus” or Health+ or Humana or Cigna or UPHP or McLaren or Assurant or Coventry or Multiplan or “Trinity Health Plan*” or “Upper Peninsula Health” or Principal</p> <p>rate w/5 w/5 Allegan or Allegiance or Alpena or Ascension or Borgess or Genesys or Providence or St. John or St. Joseph or St. Mary’s or Aspirus or Keweenaw or Ontonagon or Baraga or Beaumont or Bell or Botsford or Bronson or Caro or Charlevoix or Cheboygan or Clinton or “Branch County” or Watervliet or Covenant or Deckerville or Dickinson or “Eaton Rapids” or “Grand View” or “Harbor Beach” or “Hayes Green Beach” or “Helen Newberry” or Herrick or “Hills & Dales” or Huron or Ionia or Kalkaska or “Mackinac Straits” or Marlette or Marquette or McKenzie or “Memorial Medical Center” or “Mercy Health” or “Metro Health” or Mid-Michigan or Munising or Munson or Northstar or “Iron County” or Otsego or “Paul Oliver” or Pennock or Portage or Scheurer or Schoolcraft or Sheridan or “South Haven” or Sparrow or Spectrum or Blodgett or Butterworth or Kelsey or “Reed City” or “United Hospital” or “Three Rivers” or “West Shore” or Gerber</p>
<p>Margin</p>	<p>We might be able to limit to specific custodians.</p>
<p>Premium</p>	<p>premium w/5 hospital or facility or provider or cost or lower or higher or raise or increase*</p> <p>premium w/5 Priority or United or UH* or Aetna or Cofinity or PPOM or HAP or Health Alliance Plan or PHP or Physicians Health Plan or Health Plus or Health+ or Humana or Cigna or UPHP or McLaren or Assurant or Coventry or Multiplan or Trinity Health Plan* or Upper Peninsula Health or Principal</p>

Ashley Cummings, Esq.

October 28, 2011

Page 5 of 5

Region	region w/5 rating
Profitab*	We might be able to limit to specific custodians.
Any stand-alone references to various insurers, particularly those whose names are also general terms, e.g., "Priority" or "United" or "Principal"	delete Principal We might be able to limit to specific custodians.
Any stand-alone location names in the absence of any narrowing term, e.g., "Detroit" or "Marquette" or "Upper Peninsula"	We would be interested in hearing any proposal you have on how to narrow these terms.
Social mission	We might be able to limit to specific custodians.
Any stand-alone reference to McKenzie, Hewitt or Milliman	hospital or facility or provider w/25 McKenzie or Hewitt or Milliman
Mark	delete

As you know, it is important for us to complete resolution of the search terms quickly. It has been almost three months since the relevant document requests were served on August 2, 2011. We provided a list of proposed search terms on September 16, 2011, but received no response from you on those specific terms until your email of October 21, 2011, when you provided the list to which we have now responded above. This process is taking much longer than it should.

Please let me know if you have any questions.

Best regards,

/s/

Amy R. Fitzpatrick
Trial Attorney

cc: Elizabeth Lippitt

Exhibit 5



HUNTON & WILLIAMS LLP
600 PEACHTREE STREET, N.E.
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TEL 202 • 955 • 1500
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ASHLEY CUMMINGS
DIRECT DIAL: 404 • 888 • 4223
EMAIL: acummings@hunton.com

FILE NO: 77535.02

November 9, 2011

Via Email

Amy Fitzpatrick, Esq.
United States Department of Justice
Antitrust Division, Litigation I Section
Liberty Square Building
450 Fifth Street, NW
Suite 4100
Washington, DC 20530

United States v. Blue Cross Blue Shield of Michigan
E.D. Mich., Case No. 2:10-14155

Dear Amy:

This letter relates to our discussions regarding Blue Care Network (“BCN”). Plaintiffs have asked that Blue Cross produce its own documents, as well as those of its subsidiaries including BCN.¹ In addition, Plaintiffs have listed as “custodians” certain BCN employees, including BCN CEO Kevin Klobucar.

As you know, BCN is not a party to this litigation. BCN is non-profit HMO, which is a wholly-owned subsidiary of Blue Cross. It is, however, a separate corporate entity with its own officers, board of directors, and employees. As required by law, BCN is solely responsible for its own debts and other obligations. Neither the Blue Cross Association, Blue Cross Blue Shield of Michigan, nor any other organization using the Blue Cross or Blue Shield brand names acts as a guarantor of BCN’s obligations. Moreover, BCN has separate contracts with Michigan hospitals, and engages in communications with Michigan hospitals that are distinct from those in which Blue Cross engages. And, because BCN is an HMO, it is subject to different laws and regulations, engages in business and strategic planning separate from Blue Cross. To simply apply Plaintiffs Second Requests for Production to BCN is

¹ See Plaintiffs’ Second Requests for Production, Definition A (purporting to define “Blue Cross”); Blue Cross’s Objections and Responses to Plaintiffs’ Second Requests for Production (objecting to Plaintiffs’ definition of “Blue Cross”).



Amy Fitzpatrick, Esq.
November 9, 2011
Page 2

neither a reasonable nor thoughtful approach, and it suggests that the Plaintiffs either do not understand or have chosen to ignore the important differences between HMO, traditional, PPO, ASO and other insurance products.

Therefore, it is not — as the Department seems to believe — a simple matter of Blue Cross collecting and producing all BCN documents along with its own documents. And to expect Blue Cross to identify, collect and produce BCN documents as if they were Blue Cross's own — and, particularly, wholesale with respect to Plaintiffs' sweeping Second Requests for Production — is legally inconsistent with Blue Cross's discovery obligations, overly broad and unduly burdensome.

During the CID process that preceded this litigation, Blue Cross secured BCN's cooperation and produced documents in limited fashion for certain current or former BCN employees. Any such cooperation with the Department during the CID investigation creates no present obligations on either Blue Cross nor BCN.

Nevertheless, without waiving any objection that the Department is improperly pursuing non-party discovery or any other objections, for the sake of efficiency and in an effort to cooperate, Blue Cross proposes the following solution. Blue Cross's legal counsel will assist in coordinating the production, if the Department will provide a list tailored specifically to BCN identifying exactly what categories of documents it seeks from BCN. If that list is reasonably tailored to identify information that is either relevant or reasonably calculated to lead to the discovery of admissible evidence, Blue Cross will communicate with BCN to request that it identify and produce such documents. It will not do so, however, if the Department tries to impose on Blue Cross an unfettered obligation to collect and produce any BCN documents responsive to the Requests for Production directed to Blue Cross. Moreover, Blue Cross will coordinate with BCN to search email records, using agreed search terms, for the following BCN custodians identified by the Department: Kevin Klobucar, Jean Carlson, Allison Pollard.

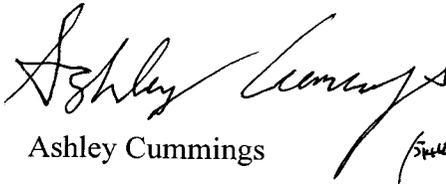
You have previously indicated that if Blue Cross does not acquiesce to the Department's demands regarding BCN, the Department will simply file a motion to compel rather than direct non-party discovery to BCN because filing a motion to compel will be "more efficient." We submit that the proposal described above is, instead, the most efficient approach and one that will not burden the Court.

**HUNTON &
WILLIAMS**

Amy Fitzpatrick, Esq.
November 9, 2011
Page 3

Moreover, you have inquired whether there are any other Blue Cross subsidiaries “like BCN,” and whether Blue Cross will produce on their behalf. While we don’t know what you mean by subsidiaries “like BCN,” Blue Cross subsidiaries include the Accident Fund Holdings, Inc. and Life Secure Insurance Company, neither of which bears any relevance this matter. Of course, there is ample information that is publically available about Blue Cross because of its unique position within Michigan’s healthcare system and its status as the insurer of last resort.

Sincerely,


Ashley Cummings

cc: M. Elizabeth Lippett, Esq.
Todd M. Stenerson, Esq.

Exhibit 6



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November 14, 2011

FILE NO: 77535.02

VIA E-MAIL

Amy Fitzpatrick
United States Department of Justice
Antitrust Division, Litigation I Section
Liberty Square Building
450 Fifth Street, NW
Suite 4100
Washington, DC 20530

Re: *United States v. Blue Cross Blue Shield of Michigan*
E.D. Mich., Case No. 2:10-14155

Dear Amy:

We have reviewed the search terms proposed in your September 16, 2011 letter. As we have discussed, utilizing those search terms would be completely unworkable and result in an unjustifiable burden on Blue Cross. Indeed, as we have told you, the search proposed by the Department results in over 64 million documents that Blue Cross would then be required to review for relevance, privilege, etc. There is no possible way that the Department could not have anticipated that its proposal — including broad general stand-alone terms such as premium, discount, pricing, stratg*, sales plan, comply, spread, region, premium, rate, and the name Mark — would be anything other than unworkable.

On October 28, 2011 the Department provided some more revised approaches to search terms, which we appreciate. We have considered the search terms originally proposed, along with the October 28 proposal, as well as sought input from Blue Cross concerning whether the meaning of certain proposed terms or phrases has any application in the context of the Company's operations. In some instances, the proposed terms are not used in the Company to refer to the types of information sought.



Amy Fitzpatrick, Esq.
November 14, 2011
Page 2

For example, Blue Cross uses the term “provider” to refer to doctors, chiropractors, physical therapists, etc., but not hospitals. And at Blue Cross the term “work group” is a general term, used frequently without any reference to or bearing on the issues in this litigation. Also, stand-alone references to hospital names, whether short form (“Marquette”) or full (“Marquette General Hospital”), remain unworkable given the volume of documentation and correspondence relating to hospitals that is of no relevance to the request. Similar issues apply to stand-alone references to insurers, particularly those whose names are also general terms, e.g., “Priority” or “United.” Stand-alone search terms such as OFIR, LARA or P.A. 350 are also problematic due to the amount of correspondence and documentation in the daily course of Blue Cross business that is irrelevant to your document requests. To the extent any documents related to any of these entities are relevant to plaintiffs’ requests, they likely will be captured by the application of other search terms.

We have enclosed a chart listing search terms or phrases that we expect to yield responsive documents, while avoiding inefficiencies created by terms that are overbroad or have a different primary meaning within Blue Cross’s usage during the ordinary course of business. We will apply these to identify documents in Blue Cross’s database that will be reviewed for responsiveness to Plaintiffs’ Second Requests for Production of Documents, as well as for privilege. If you agree with this approach, we will apply these terms and, if the search results in an overly broad or unduly burdensome yield, we will raise the issue with you, and we reserve the right to further narrow the search terms.

We will apply the searches listed in the enclosed chart to the following individuals:¹

Agreed CID No. 25965 custodians

- Mark Bartlett
- Jean Carlson
- Jeffrey Connolly
- Ken Dallafior
- Douglas Darland
- Spencer Johnson
- Robert Milewski
- David Nelson
- Gerry Noxon

¹ With respect to BCN employees Jean Carlson, Allison Pollard and Kevin Klobucar, see November 9, 2011 letter from A. Cummings to A. Fitzpatrick.



Amy Fitzpatrick, Esq.
November 14, 2011
Page 3

- Allison Pollard
- Kevin Seitz
- Kim Sorget

Custodians listed in Plaintiffs' Request No. 8

- Sue Barkell
- John Dunn
- Gary Gavin
- Connie Hoveland
- Mark Jonhson
- Kevin Klobucar
- Eric Kropfreiter
- Kathryn Levine
- Daniel Loepp
- Kelley Monterusso Root
- Lynda Rossi
- Michael Schwartz
- Tom Simmer
- Mary Smith
- Martha Spenny
- Austin Wallace

These additional persons

- Tom Leyden
- David Share

We will search all custodians at one time. The search will automatically deduplicate, such that if Custodian A sent an email to Custodians B and C, only one copy of that email (i.e., not three separate copies of that email) would be included in the resulting search population. Further, before review, we will deduplicate the resulting search population against the emails previously produced by Blue Cross in response to CID No. 25965 and in this litigation.

**HUNTON &
WILLIAMS**

Amy Fitzpatrick, Esq.
November 14, 2011
Page 4

Finally, it is evident that the Department and the civil plaintiffs are communicating separately regarding discovery, and we assume those conversations have or will include the issue of search terms. Therefore, to facilitate those conversations, we are copying the civil plaintiffs on this letter. Before conducting the search, we expect confirmation that the civil plaintiffs are in agreement with the custodians and search terms. If not, we will all need to have another discussion as the discovery process cannot be conducted efficiently and cost-effectively if the civil plaintiffs are not in agreement and later try to add additional custodians or search terms.

Sincerely,



Ashley Cummings

Enclosure

cc: Mary Jane Fait, Esq.
Casey A. Fry, Esq.
Besrat J. Gebrewold, Esq.
Daniel C. Hedlund, Esq.
M. Elizabeth Lippett, Esq.
Daniel A. Small, Esq.
Todd M. Stenerson, Esq.
Jason Thompson, Esq.
Lance C. Young, Esq.

**United States v. Blue Cross Blue Shield of Michigan
Proposed Search Terms
November 14, 2011**

MFN-Related Search Terms
("most favored" OR "most-favored" w/1 nation OR discount OR price OR pricing OR customer OR nation)
MFN
MFD
MFP
MFC
favored pricing
favorable pricing
(favorab* w/2 rate OR price OR discount OR pricing)
(favored w/2 discount OR nation OR price OR rate OR provider OR insurer OR hospital)
(parity w/10 nation OR discount OR price OR pricing OR favored)
(differential w/10 nation or discount OR price OR pricing OR favored)
(attest* w/10 nation OR discount OR price OR pricing OR favored)
(violat* w/10 nation OR discount OR price OR pricing OR favored)
(price OR pricing OR discount w/3 guarantee*)
Search Terms re: Competition or Other Health Insurers
(market w/5 share OR strateg* OR compet* OR entry OR enter OR entrance OR exit OR penetrat* OR threat OR streng* or domina*)
market power
monopol*
("next best" w/2 pric*)
(advantage OR disadvantage w/5 compet*)
(advantage OR disadvantage OR rating OR rate OR premium w/3 "Priority Health" OR "UnitedHealthcare" OR Aetna OR Cofinity OR PPOM OR HAP or "Health Alliance Plan" OR PHP OR "Physicians Health Plan" OR "Health Plus" OR Health+ OR Humana OR Cigna OR UPHP OR McLaren OR Assurance OR Coventry OR Multiplan OR "Trinity Health Plan" OR "Upper Peninsula Health" OR "Principal Financial")
(advantage OR disadvantage OR rating OR rate w/3 Allegan OR Allegiance OR Alpena OR Ascension OR Borgess OR Genesys OR Providence OR "St. John" OR "St. Joseph" OR "St. Mary's" OR Aspirus OR Keweenaw OR Ontonagon OR Baraga OR Beaumont OR Bell OR Botsford OR Boronson OR Caro OR Charlevoix OR Cheboygan OR Clinton OR "Branch County" OR Watervliet OR Covenant OR Deckerville OR Dickinson OR "Eaton Rapids" OR "Grand View" OR "Harbor Beach" OR "Hayes Green Beach" OR "Helen Newberry" OR Herrick OR "Hills & Dales" OR Huron OR Ionia OR Kalkaska OR "Mackinac Straits" OR Marlette OR Marquette OR McKenzie OR "Memorial Medical Center" OR "Mercy Health" OR "Metro Health" OR Mid-Michigan OR Munising OR Munson OR Northstar OR "Iron County" OR Otsego OR "Paul Oliver" OR Pennock OR Portage OR Scheurer OR Schoolcraft OR Sheridan OR "South Haven" OR Sparrow OR Spectrum OR Blodgett OR Butterworth OR Kelsey OR "Reed City" OR "United Hospital" OR "Three Rivers" OR "West Shore" OR Gerber)

Search Terms re: Hospitals and Hospital Contracting
LOU OR LOA or "letter of understanding" or "letter of agreement" or "side letter" w/10 Allegan OR Allegiance OR Alpena OR Ascension OR Borgess OR Genesys OR Providence OR "St. John" OR "St. Joseph" OR "St. Mary's" OR Aspirus OR Keweenaw OR Ontonagon OR Baraga OR Beaumont OR Bell OR Botsford OR Boronson OR Caro OR Charlevoix OR Cheboygan OR Clinton OR "Branch County" OR Watervliet OR Covenant OR Deckerville OR Dickinson OR "Eaton Rapids" OR "Grand View" OR "Harbor Beach" OR "Hayes Green Beach" OR "Helen Newberry" OR Herrick OR "Hills & Dales" OR Huron OR Ionia OR Kalkaska OR "Mackinac Straits" OR Marlette OR Marquette OR McKenzie OR "Memorial Medical Center" OR "Mercy Health" OR "Metro Health" OR Mid-Michigan OR Munising OR Munson OR Northstar OR "Iron County" OR Otsego OR "Paul Oliver" OR Pennock OR Portage OR Scheurer OR Schoolcraft OR Sheridan OR "South Haven" OR Sparrow OR Spectrum OR Blodgett OR Butterworth OR Kelsey OR "Reed City" OR "United Hospital" OR "Three Rivers" OR "West Shore" OR Gerber
(hospital OR facility OR provider w/3 network OR critical OR leverage OR alternative OR preferred OR dominant OR "must have" OR sole OR remote OR access OR contract OR negotiat* OR depar* OR de-par* OR termina* OR reimburs* OR "cost per case" OR CPC)
(MHA OR "Michigan Hospital Association" OR ("Michigan Health" w/ 2 "Hospital Association") w/10 (PHA OR "participating hospital agreement" OR "peer group" OR PG5))
Search Terms re: Alleged Geographic Markets
(market /3 Marquette OR "western and central" OR "Upper Penninsula" OR UP OR Lansing OR Alpena OR Traverse OR Thumb OR Detroit OR "Grand Rapids" OR Kalamazoo OR Flint OR Saginaw OR Midland OR Osceola OR Montcalm OR Allegan OR St. Joseph)
Other Search Terms
(McKinsey OR Hewitt OR Milliman w/5 study OR report w/10 hospital OR facility)
("social mission" OR "last resort" w/10 OFIR OR "office of financial and insurance regulat*" OR "PA 350" OR "P.A. 350" OR LARA OR "Department of Licensing and Regulatory Affairs")

Exhibit 7



U.S. Department of Justice

Antitrust Division

Amy R. Fitzpatrick
Liberty Square Building
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Washington, DC 20530-0001
(202) 532-4553
amy.fitzpatrick@usdoj.gov

November 16, 2011

VIA EMAIL

Ashley Cummings
Hunton & Williams LLP
Bank of America Plaza, St. 4100
600 Peachtree Street, N.E.
Atlanta, Georgia 30308

Re: *Plaintiffs' Second Request for Production of Documents - Search Terms*
United States and State of Michigan v. Blue Cross Blue Shield of Michigan
Case No. 2:10-cv-14155-DPH-MKM (E.D. Mich.)

Dear Ashley:

This is in response to your letter of November 14, 2011, which included Blue Cross's first proposal of search terms to be used in locating documents responsive to Plaintiffs' Second Request for Production of Documents served August 2, 2011.

We have compared your proposal with the initial proposal plaintiffs made on September 16, 2011, as well as the proposed amendments to that list made by plaintiffs at your request on October 28, 2011. We can agree with many of your proposed search terms and search strings. However, we believe that some important terms are missing from your list and that some of the search strings must be adjusted in order to capture documents relevant to the litigation and responsive to plaintiffs' document request.

As we discussed yesterday, we have made our changes to the search term list in column B of the Excel spreadsheet you provided. That should help both sides see where plaintiffs have made changes. The revised spreadsheet is attached. If you have any questions about the adjustments plaintiffs have made, please let me know.

Ashley Cummings, Esq.
November 16, 2011
Page 2 of 3

Plaintiffs understand that the next step will be for Blue Cross to apply these search terms to the agreed-upon custodian list¹ in Blue Cross's email database. Blue Cross will then inform plaintiffs of the results (*i.e.*, total number of documents yielded by the applied search terms) and will specifically identify any individual search terms or search strings that result in what Blue Cross believes to be "an overly broad or unduly burdensome yield." In addition, it would be particularly helpful if Blue Cross could tell us the number of documents yielded by individual custodians for those search terms, which would allow us to determine if the problem is general or custodian-specific. As long as this process proceeds in an efficient and timely manner, plaintiffs are willing to work to further narrow any individual terms or search strings that Blue Cross can demonstrate are resulting in unexpectedly large yields. However, as we explained in the call yesterday, plaintiffs do not believe it is an efficient use of time to continue to attempt to narrow the proposed search term list as long as Blue Cross is unwilling to provide us with information indicating which individual terms or search strings may be driving the volume.

Regarding the discussion during yesterday's call about the final paragraph of your November 14, 2011 letter, plaintiffs now understand that it is not Blue Cross's position that all private plaintiffs must agree to the search term and custodian lists before Blue Cross will undertake the search with respect to Plaintiffs' Second Request for Production of Documents. As we pointed out on the call, this would be improper for many reasons, including that, as you told us, there are no pending discovery requests to Blue Cross in any of the private cases, one of the private cases does not have a protective order which limits our ability to share information, the private cases involve issues not relevant to this litigation, and such a demand could have been raised any time since August 2, 2011. Plaintiffs now understand that Blue Cross is only requesting that private plaintiffs be given the opportunity for input at this time in an effort to promote efficiency. As we stated on the call, we are happy to consider the views of private plaintiffs as long as it does not lead to additional delay to our case. To that end, we have copied the private plaintiffs on this letter.

Finally, Blue Cross's statements that "[t]here is no possible way that the Department could not have anticipated that its proposal . . . would be anything but unworkable," and that the original search proposed by plaintiffs "results in over 64 million documents," are misleading. First, as plaintiffs' letter of September 16, 2011, stated, the search terms proposed in that letter were meant to give the parties a "starting point in reaching agreement on a comprehensive search term list." Despite many

¹ CID Custodians: (1) Mark Bartlett, (2) Jean Carlson, (3) Jeffrey Connolly, (4) Ken Dallafior, (5) Douglas Darland, (6) Spencer Johnson, (7) Robert Milewski, (8) David Nelson, (9) Gerry Noxon, (10) Allison Pollard, (11) Kevin Seitz, (12) Kim Sorget; Custodians Listed in Plaintiffs' Request No. 8: (13) Sue Barkell, (14) John Dunn, (15) Gary Gavin, (16) Connie Hoveland, (17) Mark Johnson, (18) Kevin Klobucar, (19) Eric Kropfreiter, (20) Kathryn Levine, (21) Daniel Loep, (22) Kelley Monterusso Root, (23) Lynda Rossi, (24) Michael Schwartz, (25) Tom Simmer, (26) Mary Smith, (27) Martha Spenny, (28) Austin Wallace; Others: (29) Joe Hohner, (30) Tom Leyden, (31) David Share (32) Robert Kaperek (for one search string only-see spreadsheet), (33) Lisa Varnier (for one search string only-see spreadsheet).

Ashley Cummings, Esq.
November 16, 2011
Page 3 of 3

requests by plaintiffs, Blue Cross chose not to provide feedback to plaintiffs until October 21, 2011, and did not provide its own proposal until November 14, 2011. Second, the September 16th terms resulted in more than 64 million documents only because Blue Cross searched its complete email database rather than only the specific identified custodians. In addition, this result did not include the de-duplication procedures Blue Cross is intending to follow.

Please let me know if you have any questions.

Best regards,

/s/

Amy R. Fitzpatrick
Trial Attorney

cc: Elizabeth Lippitt, Esq.
Mary Jane Fait, Esq.
Daniel C. Hedlund, Esq.
Daniel A. Small, Esq.
Jason Thompson, Esq.
Lance C. Young, Esq.

United States and State of Michigan v. Blue Cross Blue Shield of Michigan
Proposed Search Terms
November 16, 2011

	A	B
1	Blue Cross Proposal 11/14/11	Plaintiffs' Proposal 11/16/11
2	MFN-Related Search Terms	MFN-Related Search Terms
3	("most favored" OR "most-favored" w/1 nation OR discount OR price OR pricing OR customer OR nation)	("most favored" OR "most-favored") w/3 (nation OR discount OR price OR pricing OR customer OR clause)
4	MFN	agreed
5	MFD	agreed
6	MFP	agreed
7	MFC	agreed
8	avored pricing	agreed
9	favorable pricing	agreed
10	(favorab* w/2 rate OR price OR discount OR pricing)	change to w/5; search string appears to be missing some necessary parentheses
11	(favored w/2 discount OR nation OR price OR rate OR provider OR insurer OR hospital)	agreed (except search string appears to be missing some necessary parentheses)
12	(parity w/10 nation OR discount OR price OR pricing OR favored)	parity w/10 (nation OR discount OR price OR pricing OR favored OR rate)
13	(differential w/10 nation or discount OR price OR pricing OR favored)	differential NOT "differential diagnosis"
14	(attest* w/10 nation OR discount OR price OR pricing OR favored)	attest* w/10 (nation OR discount OR price OR pricing OR favored OR rate)
15	(violat* w/10 nation OR discount OR price OR pricing OR favored)	violat* w/10 (nation OR discount OR price OR pricing OR favored OR rate)
16	(price OR pricing OR discount w/3 guarantee*)	agreed (except search string appears to be missing some necessary parentheses)
17		"hold harmless" w/5 (MHA OR "Michigan Hospital Association" OR ("Michigan Health" w/ 2 "Hospital Association") OR PHA OR "participating hospital agreement" OR "peer group" OR PG5)
18		("peer group 5" OR PG5) w/5 (hospital OR "work group" OR workgroup)
19		antitrust
20		anti-trust
21		DOJ
22	Search Terms re: Competition or Other Health Insurers	Search Terms re: Competition or Other Health Insurers
23	(market w/5 share OR strateg* OR compet* OR entry OR enter OR entrance OR exit OR penetrat* OR threat OR streng* or domina*)	add OR power OR group OR individ*; search string appears to be missing some necessary parentheses
24	market power	eliminate -- if combined with above search string
25	monopol*	agreed
26	("next best" w/2 pric*)	agreed; parentheses may not be necessary
27	(advantage OR disadvantage w/5 compet*)	agreed (except search string appears to be missing some necessary parentheses)
28	(advantage OR disadvantage OR rating OR rate OR premium w/3 "Priority Health" OR "UnitedHealthcare" OR Aetna OR Cofinity OR PPOM OR HAP or "Health Alliance Plan" OR PHP OR "Physicians Health Plan" OR "Health Plus" OR Health+ OR Humana OR Cigna OR UPHP OR McLaren OR Assurance OR Coventry OR Multiplan OR "Trinity Health Plan" OR "Upper Peninsula Health" OR "Principal Financial")	(advantage OR disadvantage OR rating OR rate OR premium) w/5 (Priority OR United OR UH* OR Principal OR (Aetna OR Cofinity OR PPOM OR HAP or "Health Alliance Plan" OR PHP OR "Physicians Health Plan" OR "Health Plus" OR Health+ OR Humana OR Cigna OR UPHP OR McLaren OR Assurant OR Coventry OR Multiplan OR "Trinity Health Plan" OR "Upper Peninsula Health")

**United States and State of Michigan v. Blue Cross Blue Shield of Michigan
Proposed Search Terms
November 16, 2011**

	A		B
29	(advantage OR disadvantage OR rating OR rate w/3 Allegan OR Allegiance OR Alpena OR Ascension OR Borgess OR Genesys OR Providence OR "St. John" OR "St. Joseph" OR "St. Mary's" OR Aspirus OR Keweenaw OR Ontonagon OR Baraga OR Beaumont OR Bell OR Botsford OR Boronson OR Caro OR Charlevoix OR Cheboygan OR Clinton OR "Branch County" OR Watervliet OR Covenant OR Deckerville OR Dickinson OR "Eaton Rapids" OR "Grand View" OR "Harbor Beach" OR "Hayes Green Beach" OR "Helen Newberry" OR Herrick OR "Hills & Dales" OR Huron OR Ionia OR Kalkaska OR "Mackinac Straits" OR Marlette OR Marquette OR McKenzie OR "Memorial Medical Center" OR "Mercy Health" OR "Metro Health" OR Mid-Michigan OR Munising OR Munson OR Northstar OR "Iron County" OR Otsego OR "Paul Oliver" OR Pennock OR Portage OR Scheurer OR Schoolcraft OR Sheridan OR "South Haven" OR Sparrow OR Spectrum OR Blodgett OR Butterworth OR Kelsey OR "Reed City" OR "United Hospital" OR "Three Rivers" OR "West Shore" OR Gerber)		change to w/5; change Boronson to Bronson; add Mid Michigan OR MidMichigan OR Midland OR Gratiot; search string appears to be missing some necessary parentheses
30			threat* w/50 streng* w/50 weak*
31			compet* w/10 threat* OR aggressive*
32			("business plan" OR "sales plan" OR "market plan" OR "strategic plan") AND (compet* OR entry OR enter* OR entrance OR exit* OR penetrat* OR threat* OR streng* or domina*)
33	Search Terms re: Hospitals and Hospital Contracting		Search Terms re: Hospitals and Hospital Contracting
34	(LOU OR LOA or "letter of understanding" or "letter of agreement" or "side letter" w/10 Allegan OR Allegiance OR Alpena OR Ascension OR Borgess OR Genesys OR Providence OR "St. John" OR "St. Joseph" OR "St. Mary's" OR Aspirus OR Keweenaw OR Ontonagon OR Baraga OR Beaumont OR Bell OR Botsford OR Boronson OR Caro OR Charlevoix OR Cheboygan OR Clinton OR "Branch County" OR Watervliet OR Covenant OR Deckerville OR Dickinson OR "Eaton Rapids" OR "Grand View" OR "Harbor Beach" OR "Hayes Green Beach" OR "Helen Newberry" OR Herrick OR "Hills & Dales" OR Huron OR Ionia OR Kalkaska OR "Mackinac Straits" OR Marlette OR Marquette OR McKenzie OR "Memorial Medical Center" OR "Mercy Health" OR "Metro Health" OR Mid-Michigan OR Munising OR Munson OR Northstar OR "Iron County" OR Otsego OR "Paul Oliver" OR Pennock OR Portage OR Scheurer OR Schoolcraft OR Sheridan OR "South Haven" OR Sparrow OR Spectrum OR Blodgett OR Butterworth OR Kelsey OR "Reed City" OR "United Hospital" OR "Three Rivers" OR "West Shore" OR Gerber)		(LOU OR LOA OR "letter of understanding" OR "letter of agreement" OR "side letter" OR agreement OR network OR critical OR leverag* OR alternative OR preferred OR domina* OR "must have" OR sole OR remote OR access OR contract OR negotiat* OR depar* OR de-par* OR termina* OR reimburs* OR "cost per case" OR CPC OR rate*) w/10 (Allegan OR Allegiance OR Alpena OR Ascension OR Borgess OR Genesys OR Providence OR "St. John" OR "St. Joseph" OR "St. Mary*" OR Aspirus OR Keweenaw OR Ontonagon OR Baraga OR Beaumont OR Bell OR Botsford OR Bronson OR Caro OR Charlevoix OR Cheboygan OR Clinton OR "Branch County" OR Watervliet OR Covenant OR Deckerville OR Dickinson OR "Eaton Rapids" OR "Grand View" OR "Harbor Beach" OR "Hayes Green Beach" OR "Helen Newberry" OR Herrick OR "Hills & Dales" OR Huron OR Ionia OR Kalkaska OR "Mackinac Straits" OR Marlette OR Marquette OR McKenzie OR "Memorial Medical Center" OR "Mercy Health" OR "Metro Health" OR Mid-Michigan OR MidMichigan OR Midland OR Gratiot OR Munising OR Munson OR Northstar OR "Iron County" OR Otsego OR "Paul Oliver" OR Pennock OR Portage OR Scheurer OR Schoolcraft OR Sheridan OR "South Haven" OR Sparrow OR Spectrum OR Blodgett OR Butterworth OR Kelsey OR "Reed City" OR "United Hospital" OR "Three Rivers" OR "West Shore" OR Gerber)

United States and State of Michigan v. Blue Cross Blue Shield of Michigan
Proposed Search Terms
November 16, 2011

	A	B
35	(hospital OR facility OR provider w/3 network OR critical OR leverage OR alternative OR preferred OR dominant OR "must have" OR sole OR remote OR access OR contract OR negotiat* OR depar* OR de-par* OR termina* OR reimburs* OR "cost per case" OR CPC)	change to w/5; add OR steer OR tier OR strateg* OR "narrow network" OR marketab* after w/5; search string appears to be missing some necessary parentheses
36	(MHA OR "Michigan Hospital Association" OR ("Michigan Health" w/ 2 "Hospital Association") w/10 (PHA OR "participating hospital agreement" OR "peer group" OR PG5))	after w/10 add OR reimburse* OR rate* OR model OR Schonfield OR Litka OR Faja OR Spence
37		LOU OR LOA OR "letter of understanding" OR "letter of agreement" OR "side letter" OR agreement OR network OR critical OR leverag* OR alternative OR preferred OR domina* OR "must have" OR sole OR remote OR access OR contract OR negotiat* OR depar* OR de-par* OR termina* OR reimburs* OR "cost per case" OR CPC OR rate*) w/10 (dave@healthdave.com OR Muller OR Lanciotti OR Bjella OR Wilkerson OR Hepler OR Leach OR McGuire OR Maryland OR Taylor OR Felbinger OR Johnson OR Herrick OR Matzick OR Matzik OR Gronda OR Rodgers OR Babinski OR Susterich OR Nykamp OR Doxtader)
38		"regional investment"
39		region* w/3 rating
40		Priority NOT ("our priority" OR "the priority" OR "a priority" OR "number one priority" OR "#1 priority" OR "biggest priority" OR "priority one" OR "its priority" OR "her priority" OR "his priority" OR "their priority" OR "single priority" OR "top priority")
41		United NOT ("United States" OR "United Way" OR "united front" OR "are united" OR "United Auto")
42		UH*; Aetna; Cofinity; PPOM; HAP; "Health Alliance Plan"; PHP; Physicians Health Plan; Health Plus; Health+; HealthPlus; Humana; Cigna; UPHP; McLaren; Assurant; Coventry; Multiplan; "Trinity Health Plans"; "Upper Peninsula Health"
43		(margin OR margins) w/5 (group OR individual OR ASC OR ASO OR stop-loss OR "stop loss" OR hospital)
44		(margin OR margins) AND (Aetna OR United OR UH* OR Priority OR Cofinity OR PHP or McLaren OR HealthPlus OR Health+ OR "Health Plus" OR HAP OR competit*)
45		("medical loss ratio" OR MLR OR "benefit cost ratio" OR BCR) AND (Aetna OR United OR UH* OR Priority OR Cofinity OR PHP or McLaren OR HealthPlus OR Health+ OR "Health Plus" OR HAP OR competit*)
46	Search Terms re: Alleged Geographic Markets	Search Terms re: Alleged Geographic Markets
47	(market /3 Marquette OR "western and central" OR "Upper Penninsula" OR UP OR Lansing OR Alpena OR Traverse OR Thumb OR Detroit OR "Grand Rapids" OR Kalamazoo OR Flint OR Saginaw OR Midland OR Osceola OR Montcalm OR Allegan OR St. Joseph)	(hospital* OR facilit* OR provider* OR market OR compet* OR region OR area OR threat* OR domina* OR advantag* OR network*) w/5 (Marquette OR "western and central" OR "Upper Penninsula" OR UP OR Lansing OR Alpena OR Traverse OR Thumb OR Detroit OR "Grand Rapids" OR Kalamazoo OR Flint OR Saginaw OR Midland OR Osceola OR Montcalm OR Allegan OR St. Joseph OR Gratiot)

**United States and State of Michigan v. Blue Cross Blue Shield of Michigan
Proposed Search Terms
November 16, 2011**

	A	B
48		market w/5 (defin* OR MSA OR county OR bound*)
49	Other Search Terms	Other Search Terms
50	(McKinsey OR Hewitt OR Milliman w/5 study OR report w/10 hospital OR facility)	(McKinsey OR Hewitt OR Milliman) AND (hospital OR facility OR facilities OR provider*)
51	("social mission" OR "last resort" w/10 OFIR OR "office of financial and insurance regulat*" OR "PA 350" OR "P.A. 350" OR LARA OR "Department of Licensing and Regulatory Affairs")	hospital w/10 ("social mission" OR "last resort" OR OFIR OR (office w/3 financial w/3 insurance) OR "PA 350" OR "P.A. 350" OR LARA OR "Department of Licensing and Regulatory Affairs" OR "provider class plan"); *** <i>We believe that the individuals most-likely to have these documents are Robert Kasperek and Lisa Varnier. Therefore, we ask that you add those individuals as custodians but search them using this search string only.</i>

Exhibit 8



U.S. Department of Justice

Antitrust Division

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amy.fitzpatrick@usdoj.gov

November 30, 2011

VIA EMAIL

Ashley Cummings, Esq.
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Bank of America Plaza, St. 4100
600 Peachtree Street, N.E.
Atlanta, Georgia 30308

Re: *Plaintiffs' Second Request for Production of Documents – Blue Care Network
United States and State of Michigan v. Blue Cross Blue Shield of Michigan
Case No. 2:10-cv-14155-DPH-MKM (E.D. Mich.)*

Dear Ashley:

This letter responds to your letter of November 9, 2011, and addresses Blue Cross Blue Shield of Michigan's ("BCBSM") compliance with Plaintiffs' Second Request for Production of Documents served August 2, 2011. As you know, it is our belief that Blue Care Network's ("BCN") documents are in the possession, custody, or control of BCBSM and, therefore, must be included in BCBSM's response to Plaintiffs' Second Request.¹ However, at your request, and in an effort to resolve the issue, this letter sets forth a proposal regarding the information specifically sought from BCN in Plaintiffs' Second Request, and the specific requests that plaintiffs would agree need not be answered for BCN.

¹ BCN is a wholly owned subsidiary of BCBSM, and, as your letter acknowledges, BCBSM previously demonstrated its ability to obtain BCN documents when it produced BCN documents in response to a Civil Investigative Demand. BCBSM is also able to obtain information and documents from BCN for BCBSM's business purposes. *See, e.g.*, BLUECROSSMI-99-042027 (2008 "Financial Deep Dive" on the fifteen largest BCBSM and BCN customers).

Ashley Cummings, Esq.
November 30, 2011
Page 2 of 4

Plaintiffs are willing to agree to the following proposal if BCBSM agrees to produce the responsive BCN documents identified:

- BCN documents need not be searched or produced in response to Requests 33 through 41.
- Requests 8, 12, and 18 may be limited to a search of the hard copy and electronic files of the three BCN custodians previously identified: Kevin Klobucar, Jean Carlson, and Allison Pollard. For the email portion of that search, the agreed upon search terms may be used.
- Requests 13 and 14 relate to contract negotiations. Plaintiffs are willing to limit the search for BCN documents responsive to these requests to the hard copy and electronic files (including email) of those BCN personnel responsible for hospital contracting.
- Requests 9, 10, and 11 seek documents related to MFNs. BCN's documents relating to MFNs should be produced. However, plaintiffs are willing to discuss and consider a proposal by BCBSM regarding reasonable limitations to the scope of the search to be conducted for BCN documents responsive to these three requests.
- Requests 15, 16, and 17 seek copies of contracts with Michigan hospitals or Michigan hospital systems. BCN's contracts should be produced.
- BCN documents should be produced in response to Requests 19, 20, and 21. However, plaintiffs are willing to discuss and consider a proposal by BCBSM regarding reasonable limitations to the scope of the search to be conducted for BCN documents responsive to these three requests.
- Request 22 relates to BCBSM's annual update factor. To the extent that BCN has a separate annual update factor, BCN documents should be produced. If the annual update factor for BCBSM and BCN has been the same during the time period specified, BCBSM need produce BCN documents sufficient to show only that fact. In addition, this request is limited to "documents sufficient to show," and, therefore, does not require an overarching search of BCN documents.
- Request 23 relates to underwriting policies. To the extent that BCN has separate underwriting policies, BCN's documents should be produced. If the underwriting policies for BCBSM and BCN have been the same during the time period specified, BCBSM need produce BCN documents sufficient to show only that fact. In addition, this request is

Ashley Cummings, Esq.

November 30, 2011

Page 3 of 4

limited to “documents sufficient to show,” and, therefore, does not require an overarching search of BCN documents.

- The parties are in the process of negotiating an overall clarification of Request 24 that will make clear that the request seeks documents that consider price changes by business segment (however BCBSM defines its business segments) and does not seek granular customer-level analyses. Subject to that clarification, BCN documents must be produced. However, plaintiffs are willing to discuss and consider a proposal by BCBSM regarding reasonable limitations to the scope of the search to be conducted for BCN documents responsive to this request.

- Request 25 relates to rating regions. To the extent that BCN has different rating regions from BCBSM’s, BCN’s documents should be produced. If the rating regions have been the same for BCBSM and BCN during the time period specified, BCBSM need produce BCN documents sufficient to show only that fact. One exception to this limitation is that to the extent that BCN personnel have been involved in discussions or analyses of potential new geographic rating regions, BCN’s documents on that issue must be produced.

- Request 26 relates to changes in reimbursement rates and premiums. BCN’s documents should be produced.

- The parties are in the process of negotiating an overall modification to Request 27 that will allow BCBSM to identify its five largest customers by the regions or areas that BCBSM uses and defines in the normal course of its business. Plaintiffs are waiting for BCBSM’s proposal. Subject to the modification, BCN documents should be produced.

- Request 42 seeks documents, such as data dictionaries, that identify and provide the necessary background information for an understanding of any data source systems used for reporting and analysis of rates, discounts, claims, billing, enrollment, and eligibility. If BCN has separate data source systems that it uses for analytics involving rates, discounts, claims, billing, enrollment, and eligibility, BCN’s documents on that subject must be produced. However, to the extent that BCN’s data source systems feed into BCBSM’s data source systems, such production may not be necessary. Though you have stated to us that BCN’s data is kept separately from BCBSM’s data, we understand from documents BCBSM has produced that BCN’s data source systems (e.g., FACETS) do feed into BCBSM’s data source systems (e.g., OSCAR). *See, e.g.*, BLUECROSSMI-99-076747; BLUECROSSMI-E-0136231;

Ashley Cummings, Esq.

November 30, 2011

Page 4 of 4

BLUECROSSMI-10-001334; BLUECROSSMI-EM-0213810;
BLUECROSSMI-E-0172606. Please confirm or clarify.

I hope that this proposal is helpful and will result in your agreement to produce BCN documents in response to Plaintiffs' Second Request. As always, I am available to discuss any questions you may have.

Best regards,

/s/

Amy R. Fitzpatrick
Trial Attorney

cc: Elizabeth Lippitt, Esq.

Exhibit 9



U.S. Department of Justice

Antitrust Division

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December 22, 2011

VIA EMAIL

Ashley Cummings, Esq.
Hunton & Williams LLP
Bank of America Plaza, St. 4100
600 Peachtree Street, N.E.
Atlanta, Georgia 30308

Re: *Schedule of Production – Plaintiffs’ First and Second Requests for Production of Documents*
United States and State of Michigan v. Blue Cross Blue Shield of Michigan
Case No. 2:10-cv-14155-DPH-MKM (E.D. Mich.)

Dear Ashley:

This letter addresses Blue Cross’s failure to complete in a timely manner production of documents responsive to Plaintiffs’ First and Second Requests for Production of Documents as well as Blue Cross’s continuing refusal to commit to any production schedule. Continuing in this manner will prejudice plaintiffs’ ability to complete fact discovery in the time allotted by the Scheduling Order [Dkt. #67]. Plaintiffs are committed to adhering to that schedule, and, therefore propose the following schedule for completion of Blue Cross’s production pursuant to Plaintiffs’ First and Second Requests for Production of Documents. Plaintiffs also raise below what we believe are the outstanding production issues for which resolution is overdue.

Plaintiffs’ First Request for Production of Documents

You committed during telephone conferences on December 1, 2011, December 9, 2011, and December 15, 2011 to curing the deficiencies in Blue Cross’s production in response to Plaintiffs’ First Request for Production of Documents. However, you have refused to provide plaintiffs with even an estimate for production of the missing and incomplete native PowerPoint and Excel documents. As you know, these documents

Ashley Cummings, Esq.

December 22, 2011

Page 2 of 5

were subject to a court order compelling their production by September 12, 2011. Plaintiffs informed you of the deficiencies in telephone calls on October 28, 2011, and November 10, 2011, by email dated November 7, 2011, and by letter dated November 23, 2011. Blue Cross has had more than enough time to cure the identified deficiencies, and, therefore, we ask that Blue Cross commit by January 6, 2011, to produce these documents on or before January 23, 2011. If we do not receive that commitment, plaintiffs will be forced to seek relief from the Court.

Plaintiffs' Second Request for Production of Documents

Plaintiffs' Second Request for Production of Documents was served on August 2, 2011. Blue Cross did not begin producing responsive documents until November 4, 2011, and you have stated that that first production included only those documents that Blue Cross had previously collected to respond to a Civil Investigative Demand that Plaintiffs issued in 2010 during the pre-complaint investigation, but which Blue Cross did not produce then. (E.g., telephone call of October 28, 2011). Therefore, no documents collected specifically in response to Plaintiffs' Second Request for Production of Documents were produced until December 2, 2011. To date, a total of 10,897 documents have been produced in response to Plaintiffs' Second Request for Production of Documents.¹

On numerous occasions, plaintiffs have asked Blue Cross to provide a schedule for completion of production. (E.g., telephone calls of November 17, 2011, November 22, 2011, and December 22, 2011). Plaintiffs have also asked Blue Cross to order its production so that documents from priority custodians are produced before other documents. (E.g., telephone calls of November 10, 2011, November 17, 2011, and December 22, 2011). These requests were made to enable plaintiffs to schedule depositions. Such scheduling is dependent on when relevant documents are produced. Plaintiffs understand from our telephone conversations with you on these issues that Blue Cross refuses to provide even an estimate for completion of production² and also refuses, without explanation, to order its production so that documents from priority custodians are produced earlier in the production.

¹ Volume BC039, produced on November 4, 2011, BLUECROSSMI-99-078453 to BLUECROSSMI-99-109737 (2,822 documents); Volume BC040, produced December 2, 2011, BLUECROSSMI-99-109738 to BLUECROSSMI-99-195519 (7,294 documents); Volume BC041, produced December 9, 2011, BLUECROSSMI-99-195520 to BLUECROSSMI-99-210078 (781 documents).

² Blue Cross's excuse that it cannot provide an estimate for completion of production because it does not yet know the amount of email that will need to be reviewed before collection is a problem of its own creation. Blue Cross delayed agreement over search terms to be used in the collection of email (*see* letter dated November 16, 2011, from A.Fitzpatrick to A. Cummings) and, to date, has failed to finish running the search terms that it finally agreed a month ago to run. (Telephone call on November 22, 2011).

Ashley Cummings, Esq.

December 22, 2011

Page 3 of 5

Given the length of time Blue Cross has already had to respond to Plaintiffs' Second Request for Production of Documents (nearly 5 months as of the date of this letter) and the need for completion of fact discovery, including depositions, within the time allotted by the Court, Plaintiffs believe that setting a production schedule and prioritizing the production of documents from certain custodians is necessary and reasonable. Plaintiffs, therefore, propose a schedule for completion of Blue Cross's production in response to Plaintiffs' First and Second Requests for Production of Documents in the table below.

Date of Production	Custodian/Source
January 23, 2012	Seitz Loepp Completion of production of all native PowerPoint and Excel documents responsive to Plaintiffs' First Request for Production of Documents.
January 27, 2012	Noxon Schwartz
January 30, 2012	Sorget Darland
January 31, 2012	Completion of production of all hard copy documents responsive to Plaintiffs' Second Request for Production of Documents; completion of production of documents responsive to Request No. 37
February 3, 2012	Milewski Dallafior Connolly
February 6, 2012	Hohner Kropfreiter Hoveland
February 10, 2012	Johnson Varnier Kasperek
February 17, 2012	Simmer Klobucar Barkell Rossi
February 20, 2012	Completion of production of all electronic documents (other than email) from shared sources such as shared drives, intranets, or other electronic repositories responsive to Plaintiffs' Second Request for Production of Documents; completion of production of

Ashley Cummings, Esq.
 December 22, 2011
 Page 4 of 5

	documents responsive to Request No. 32
February 24, 2012	Smith Gavin Levine Dunn
February 27, 2012	Spenny Monterusso Wallace Bartlett Nelson
March 5, 2012	Completion of production of all remaining documents responsive to Plaintiffs' Second Request for Production of Documents

Plaintiffs are willing to discuss and consider any reasonable modification to this proposed schedule. Given the time that has already elapsed, plaintiffs ask for Blue Cross's response to this proposed schedule by January 6, 2012. If Blue Cross is unwilling to agree to a reasonable schedule for completion of its production, plaintiffs will pursue all remedies.

Other Outstanding Issues

In addition, to Blue Cross's unwillingness to commit to a production schedule, several other important issues remain outstanding concerning Plaintiffs' Second Request for Production of Documents:

- Blue Cross has not yet responded to plaintiffs' letter of November 30, 2011, regarding Blue Care Network ("BCN").
- Blue Cross has not committed to a final list of search terms to govern the production of email.
- Blue Cross has not provided plaintiffs with a proposed modification to Request 24, which Blue Cross committed to do in a telephone call on October 13, 2011.
- Blue Cross has not provided plaintiffs with a proposed modification to Request 27, which Blue Cross committed to do in a telephone call on October 13, 2011.

Please respond regarding these issues by January 6, 2012. Otherwise, plaintiffs will be forced to seek relief from the Court.

Ashley Cummings, Esq.

December 22, 2011

Page 5 of 5

As always, I am available to discuss any questions you may have. You will soon be receiving another letter setting forth all of the modifications and clarifications that plaintiffs understand have been agreed to between the parties with respect to Plaintiffs' Second Request for Documents.

Best regards,

/s/

Amy R. Fitzpatrick
Trial Attorney

cc: Elizabeth Lippitt, Esq.

Exhibit 10



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FILE NO: 77535.00002

January 6, 2012

Via Email

Amy Fitzpatrick, Esq.
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Washington, DC 20530

United States v. Blue Cross Blue Shield of Michigan,
E.D. Mich., Case No. 2:10-14155

Dear Amy:

This letter responds to your letter dated December 22, 2011 concerning document production. As we have stated, discovery be coordinated with the civil class-action plaintiffs in the matters now pending before Judge Hood. The pros and cons of coordination are further complicated and underscored by the related litigation recently filed by Aetna, Inc. Even further compounding the issue is the Department's position in recent depositions that civil plaintiffs' counsel must leave the deposition when any document is introduced that was produced and designated confidential by a third party other than the hospital. (That is, of course, an issue for the civil plaintiffs themselves to resolve. Nonetheless, it again highlights the issues about coordination among the various parties and cases.)

Blue Cross is already facing monumental discovery costs. Without some type of coordinated discovery, its discovery burden will necessarily increase exponentially. Although there are numerous issues that require coordination, as explained below the document production to you cannot efficiently be completed unless and until the private plaintiffs, including Aetna, are given an opportunity to comment on the search terms. Having noted these overarching concerns, we address each of the issues identified in your December 22 letter.



Amy Fitzpatrick
January 6, 2012
Page 2

Plaintiffs' First Request for Production of Documents

Plaintiffs' First Request for Production sought documents collected later in the CID process but that were not then produced because the CID process terminated upon Plaintiffs' filing of the Complaint. As we have explained on multiple occasions, those documents were collected by a prior vendor, which predated our involvement. When those documents were provided to our current vendor, the attachments to the emails were not native but TIFF images. To ensure that we produced the 2004-2005 emails collected in the CID process to Plaintiffs timely and in keeping with the court-ordered deadline, we produced them in the only format then available. We also told you in a telephone call before the production that we had discovered an issue with the Excel attachments to the emails and that we were attempting to work through it. At that time, we thought it could be resolved through our current vendor. When we learned that it was not a technical issue but, instead, a matter of locating the native images, we promptly attempted to contact the prior vendor.

To be clear, we have not "refused" to provide a date by which the native PowerPoint and Excel documents would be produced; we could not promise a date without some assurance that we could access those documents in the first place. As we told you on December 1, 9 and 15, 2011, we were unable to secure any confirmation from the prior vendor that the native documents were in fact available. We reached the vendor on December 21, and on January 6 the vendor confirmed that the emails with native attachments are available. We expect to be able to provide the native documents to you by January 20.

Plaintiffs' Second Request for Production of Documents

We take issue with your assertion that Blue Cross has failed to complete its document production in a timely manner. In view of the broad scope of the Complaint, which covers 34 separate and distinct antitrust cases, and the comprehensive nature of Plaintiffs' 49 Requests for Production (not counting multiple sub-parts) as they relate to those 34 separate rule-of-reason cases, this is no simple collection and production. It involves collection from multiple custodians and departments throughout Blue Cross, seeking documents relating to hospital contracting and negotiations since January 1, 2005 involving over 130 Michigan hospitals, Blue Cross's strategic business planning discussing any health insurance products or ASO services offered by Blue Cross or any of its competitors, Blue Cross's pricing strategies and marketing strategies—and that is just the tip of the iceberg. Then, Plaintiffs want Blue Cross to essentially repeat this process for its subsidiary BCN, which is not even a defendant to the litigation. (*See discussion infra.*)



Amy Fitzpatrick
January 6, 2012
Page 3

We are committed to completing production as quickly as possible, and have dedicated significant resources to doing so. But we do not agree that Plaintiffs get to dictate the order or schedule of that production. To date, Blue Cross has produced over 46,000 documents, including documents produced today. That is, of course, in addition to the over 60,000 documents that it produced in response to CID No. 25965. (The documents produced on November 4, 2011 are responsive to Plaintiffs' Second Request for Production. That those documents were collected before Plaintiffs served their Second Request is of no consequence.)

Further, Blue Cross has completed its collection of hard-copy documents and electronically-kept files identified as potentially responsive. Those documents are being reviewed for responsiveness and privilege. Blue Cross is reviewing the documents as they are maintained in the ordinary course of business. For instance, the review has focused on providing to Plaintiffs responsive documents from its hospital contracting files, where the Blue Cross documents likely to be most pertinent to the central allegations in the Complaint are kept. Currently, we anticipate that review and production of those documents will be substantially completed by March 31, 2011.

Regarding collection of email documents, we have negotiated in good faith with the Department regarding search terms and have reached a preliminary agreement with Plaintiffs on those terms. Blue Cross is testing those terms against a subset of documents to determine whether there are any search strings that could potentially pull an unanticipated unreasonable volume of documents. We will notify you on or before January 20, 2012 whether any of the proposed search strings present such a problem.

Meanwhile, we have asked the private plaintiffs in related litigation to review and comment on the search terms. Despite having received Blue Cross documents for review and having attended all depositions to date, the private plaintiffs contend that they are not knowledgeable enough at this juncture to comment on the proposed search terms. In view of the considerable burden and expense to our client, it is imperative that certain aspects of discovery—including Blue Cross's document production—be coordinated. We will afford the private plaintiffs one final opportunity to comment on the proposed search terms. And now that Aetna has filed suit, we will give Aetna a reasonable opportunity to comment, as well.

We expect that the parties will be able to finalize the search terms by mid-February. We will provide a date-certain by which we will substantially complete production of email records collected by application of these search terms once we know the total volume of



Amy Fitzpatrick
January 6, 2012
Page 4

documents identified by the search. Blue Cross has no obligation to structure its review in a manner to suit Plaintiffs' bidding. Nevertheless, in an effort to compromise and proceed forward, we will endeavor to review the emails collected by identifying any emails sent by, received by, or copied to the following individuals in this order: Seitz, Loepp, Noxon, Schwartz, Sorget, Darland, Milewski, Dallafior, Connolly, Hohner, Kropfreiter, Hoveland, Johnson, Varnier, Kaspereck, Simmer, Klobucar, Barkell, Rossi, Smith, Gavin, Levine, Dunn, Spenny, Monterusso, Wallace, Bartlett, Nelson. Production will be made on a rolling basis, but we cannot commit at this time to a precise date by which emails sent by, received by, or copied to these individuals will be produced or completed.

Plaintiffs' Request for BCN Documents

Plaintiffs' Second Request for Production seeks documents belonging to Blue Cross's subsidiary, Blue Care Network (BCN). As noted in my letter dated November 9, 2011, Plaintiffs are improperly pursuing non-party discovery through Blue Cross. Without waiving that objection, we proposed that Blue Cross's legal counsel would assist in coordinating a production by BCN *if* Plaintiffs would provide a list of documents sought tailored specifically to BCN. We noted that it would not do for Plaintiffs to seek to apply in wholesale fashion all BCN documents that might be responsive to the Second Request for Production. On November 30, Plaintiffs proposed that portions of their Second Request for Production—specifically, Request Nos. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 42—be applied to BCN.

Blue Cross has communicated this request to BCN. It is BCN's view that Plaintiffs' November 30 proposal does very little to narrow the requests or to tailor the requests to BCN, or to acknowledge that BCN is not a party to this litigation. Plaintiffs have made no claim against BCN regarding its use of MFNs or otherwise. Plaintiffs have, to date, offered no explanation of the relevance of documents concerning, for instance, BCN's annual update factor or its underwriting policies; nor have Plaintiffs made any effort to explain how BCN's data bears any relevance to this litigation.

You are correct that, during the CID process, Blue Cross coordinated with BCN counsel to search for and produce documents belonging to certain BCN custodians concerning or discussing the use of MFNs. Plaintiffs offer no explanation why even the BCN documents produced in the CID process, which affords the Department a broader scope of inquiry than that which applies here, are relevant. Nevertheless, upon further review of those documents, and upon consulting with BCN personnel who may reasonably be believed to have documents concerning or discussing the use of MFNs, those documents were already produced in



Amy Fitzpatrick
January 6, 2012
Page 5

response to CID No. 25965. In addition, we have agreed to coordinate the production of emails sent by, received by, or copied to BCN employees Kevin Klobucar, Jean Carlson and Allison Pollard identified by application of agreed search terms and reviewed for responsiveness and privilege will be produced as discussed above. (*See* discussion *supra*.) This is more than sufficient for Plaintiffs to obtain, to the extent it exists, any information in non-party BCN's possession concerning defendant Blue Cross's use of MFNs or communications between those entities regarding MFNs.

Plaintiffs' Request No. 24

Request No. 24 seeks "all minutes, summaries, reports, presentations and analyses, since January 1, 2006, discussing pricing recommendations, pricing analyses, pricing decisions, and any factors considered in price changes" for self-funded customers, experience-rated group customers, community-rated group customers or commercial individual customers. Blue Cross objected to Request No. 24 as overly broad and unduly burdensome. The Request could be read to seek not just summary-level documents but also pricing decisions and analyses on a more granular, customer-by-customer level; any effort to capture all documents at a customer-by-customer level would be far too burdensome and, certainly, overbroad.

Blue Cross will produce—and has already produced—summary-level documents, reports, presentations and analyses that address these and other types of health insurance customers. To the extent Blue Cross's production of responsive documents may include some customer-specific information responsive to Request No. 24, any such production does not constitute a waiver of Blue Cross's position or open the door to production of all such customer-specific information.

**HUNTON &
WILLIAMS**

Amy Fitzpatrick
January 6, 2012
Page 6

Plaintiffs' Request No. 27

Plaintiff's Request No. 27 asks for four categories of documents "[f]or each of BCBSM's five largest fully insured group customers and five largest self-funded group customers in each relevant geographic area (measured by the number of group members residing in that relevant geographic area)." Blue Cross objected to Request No. 27 because Blue Cross does not maintain in the ordinary course of business documents or analyses categorized in this manner. Plaintiffs had in their possession at the time they served Request No. 27 (and, for that matter, at the time they filed their Complaint alleging these gerrymandered geographic areas) documents that show that is not, in fact, how Blue Cross categorizes or compares its customers.

Plaintiffs then asked Blue Cross to re-word Request No. 27 to identify how it categorizes its customers and to identify the five largest in each group. After careful consideration, we decline to do so. Blue Cross will produce documents sufficient to show how it tracks its customer base.

As always, I am available to discuss these matters.

Sincerely,



Ashley Cummings

Enclosure

cc: Elizabeth Lippitt, Esq.
Todd M. Stenerson, Esq.

Exhibit 11



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January 20, 2012

FILE NO: 77535.00002

Via Email

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***United States v. Blue Cross Blue Shield of Michigan,
E.D. Mich., Case No. 2:10-14155***

Dear Amy:

Blue Cross has conducted test searches of the preliminarily-agreed search strings to determine whether any of those search strings could pull an unreasonable volume of documents. I have enclosed a spreadsheet listing the proposed search strings. Of those, the following search strings present a problem because tests reveal that they will result in an unreasonably large and extremely burdensome number of documents for review and production. For ease of reference, these are identified by line number in the corresponding spreadsheet.

- Line 34: (LOU OR LOA OR "letter of understanding" OR "letter of agreement" OR "side letter" OR agreement OR network OR critical OR leverag* OR alternative OR preferred OR domina* OR "must have" OR sole OR remote OR access OR contract OR negotiat* OR depar* OR de-par* OR termina* OR reimbur* OR "cost per case" OR CPC OR rate*) w/10 (Allegan OR Allegiance OR Alpena OR Ascension OR Borgess OR Genesys OR Providence OR "St. John" OR "St. Joseph" OR "St. Mary*" OR Aspirus OR Keweenaw OR Ontonagon OR Baraga OR Beaumont OR Bell OR Botsford OR Bronson OR Caro OR Charlevoix OR Cheboygan OR Clinton OR "Branch County" OR Watervliet OR Covenant OR Deckerville OR Dickinson OR "Eaton Rapids" OR "Grand View" OR "Harbor



Amy Fitzpatrick
January 20, 2012
Page 2

Beach" OR "Hayes Green Beach" OR "Helen Newberry" OR Herrick OR "Hills & Dales" OR Huron OR Ionia OR Kalkaska OR "Mackinac Straits" OR Marlette OR Marquette OR McKenzie OR "Memorial Medical Center" OR "Mercy Health" OR "Metro Health" OR Mid-Michigan OR Mid Michigan OR MidMichigan OR Midland OR Gratiot OR Munising OR Munson OR Northstar OR "Iron County" OR Otsego OR "Paul Oliver" OR Pennock OR Portage OR Scheurer OR Schoolcraft OR Sheridan OR "South Haven" OR Sparrow OR Spectrum OR Blodgett OR Butterworth OR Kelsey OR "Reed City" OR "United Hospital" OR "Three Rivers" OR "West Shore" OR Gerber)

- Line 35: (hospital OR facility OR provider) w/5 (network OR critical OR leverage OR alternative OR preferred OR dominant OR "must have" OR sole OR remote OR access OR contract OR negotiat* OR depar* OR de-par* OR termina* OR reimbur* OR "cost per case" OR CPC OR steer OR tier OR strateg* OR "narrow network" OR marketab*)
- Line 40: Priority NOT ("our priority" OR "the priority" OR "a priority" OR "number one priority" or #1 priority" OR "biggest priority" OR "priority one" OR "its priority" OR "her priority" OR "his priority" OR "their priority" OR "single priority" OR "top priority")
- Line 41: United NOT ("United States" OR "United Way" OR "united front" OR "are united" OR "United Auto" OR "stand united" OR "to be united")
- Line 42: UH*; Aetna; Cofinity; PPOM; HAP; "Health Alliance Plan"; PHP; Physicians Health Plan; Health Plus; Health+; HealthPlus; Humana; Cigna; UPHP; McLaren; Assurant; Coventry; Multiplan; "Trinity Health Plans"; "Upper Peninsula Health"
- Line 44: (margin OR margins) AND (Aetna OR United OR UH* OR Priority OR Cofinity OR PHP or McLaren OR HealthPlus OR Health+ OR "Health Plus" OR HAP OR competit*)
- Line 45: ("medical loss ratio" OR MLR OR "benefit cost ratio" OR BCR) AND (Aetna OR United OR UH* OR Priority OR Cofinity OR PHP or McLaren OR HealthPlus OR Health+ OR "Health Plus" OR HAP OR competit*)



Amy Fitzpatrick
January 20, 2012
Page 3

- Line 47: (hospital* OR facilit* OR provider* OR market OR compet* OR region OR area OR threat* OR domina* OR advantag* OR network*) w/5 (Marquette OR "western and central" OR "Upper Penninsula" OR UP OR Lansing OR Alpena OR Traverse OR Thumb OR Detroit OR "Grand Rapids" OR Kalamazoo OR Flint OR Saginaw OR Midland OR Osceola OR Montcalm OR Allegan OR St. Joseph OR Gratiot)
- Line 50: (McKinsey OR Hewitt OR Milliman) AND (hospital OR facility OR facilities OR provider*)

We invite your comments regarding how these search strings might be narrowed.

Sincerely,



Ashley Cummings

Enclosure

cc: Elizabeth Lippitt, Esq.
Todd M. Stenerson, Esq.

Exhibit 12



U.S. Department of Justice

Antitrust Division

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January 24, 2011

VIA EMAIL

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Atlanta, Georgia 30308

Re: *Schedule of Production – Plaintiffs’ Second Request for Production of Documents
United States and State of Michigan v. Blue Cross Blue Shield of Michigan
Case No. 2:10-cv-14155-DPH-MKM (E.D. Mich.)*

Dear Ashley:

This letter responds to your letter of January 20, 2012 regarding search terms, and proposes a reasonable approach to resolve the parties’ differences in a way that will allow for completion of fact discovery, including all necessary depositions of Blue Cross personnel, in the time allotted by the Scheduling Order [Dkt. #67]. As you know, the schedule for production of Blue Cross’s documents in response to Plaintiffs’ Second Request for Production of Documents, served August 2, 2011, directly affects the timing of those depositions.

In your letter, you identify nine search strings that you believe “could pull an unreasonable volume of documents.” Plaintiffs understand, however, that you are in the process of applying additional restrictions to those test searches to determine if your results are predictive of volume for the 33 custodians whose emails are actually subject to search. For example, we understand that the method chosen by Blue Cross to test the preliminary agreed to search strings was to run the search strings across the entire Blue Cross email database for a three-month period and then to multiply the monthly average

Ashley Cummings, Esq.

January 24, 2012

Page 2 of 4

result from the three-month test period by 93 months.¹ We understand that the nine potentially problematic search strings were identified in this way. As we discussed, relying on test searches run across the entire database—when Blue Cross has more than 7000 employees,² and you have informed us that the email database also includes former employees—is not an accurate prediction of volume for review and production of emails from only 33 custodians or evidence of undue burden.

We understand that Blue Cross is now in the process of limiting the test search results to the 33 custodians (identified as the “to”, “from”, “cc” and “bcc” senders and recipients of an email) agreed to between the parties. We agree that this must be done. Plaintiffs believe, however, that Blue Cross should have imposed this limitation before January 20, 2012, the date by which Blue Cross committed to identify any potentially problematic search strings.

In any case, plaintiffs understand that Blue Cross has no objection to the remaining 36 preliminary-agreed search strings. Plaintiffs therefore propose that Blue Cross begin to run those 36 search strings immediately for the 33 agreed custodians and produce all responsive documents resulting from those 36 search strings in the proposed schedule set forth below. This can be done while the parties continue to negotiate the nine search strings identified as potentially problematic in your January 20, 2012 letter, with the idea that documents identified by those nine search strings may be produced once agreement is reached.

Date of Production	Custodian
February 20, 2012	Seitz Loepp
February 24, 2012	Noxon Schwartz
February 27, 2012	Sorget Darland
March 5, 2012	Milewski Dallafior Connolly
March 9, 2012	Hohner Kropfreiter Hoveland

¹ Using this method, you reported to me during our call on January 23, 2012, that Line 34 resulted in approximately 15,800 emails per month for the three months searched. Line 35 resulted in approximately 24,700 emails per month. Lines 40, 42, and 47 each resulted in approximately 25,000 emails per month, and Line 50 resulted in 7500 emails per month. You did not then have number results for the rest of the identified strings.

² See <http://www.bcbsm.com/home/careers/> (“over 7,000 employees at BCBSM”).

Ashley Cummings, Esq.

January 24, 2012

Page 3 of 4

March 12, 2012	Johnson Varnier Kasperek
March 16, 2012	Simmer Klobucar Barkell Rossi
March 23, 2012	Smith Gavin Levine Dunn
March 30, 2012	Spenny Monterusso Wallace Bartlett Nelson Completion of production of all remaining responsive email resulting from negotiation of the nine search strings identified in Blue Cross's January 20, 2012 letter, if not already produced

Plaintiffs are willing to discuss and consider any reasonable modification to this proposed schedule. Given the time that has already elapsed—Blue Cross has had since November 16, 2011 to run the preliminary-agreed search strings properly—plaintiffs ask for Blue Cross's response to this proposed schedule before the end of this week.

Regarding the nine search strings identified in your January 20, 2012 letter, plaintiffs ask that Blue Cross commit to providing us with the results of the further narrowing by custodian by January 27, 2012. In addition, as I suggested during our call yesterday, the search strings on Lines 34, 35, and 47 should be broken up into smaller queries so that we can determine which individual terms may be driving the resulting volume. Without that information, which is solely within Blue Cross's control, plaintiffs are unable to suggest useful modifications to those search strings. Finally, as I also suggested yesterday, a sample of the results from the search strings on Lines 40 and 41 should be reviewed to determine if there are other "NOT" limitations that could be applied to filter out results that do not refer to Priority Health or United Health.³ Without reviewing the results of the searches, however, plaintiffs have no way of determining what other phrases could be excluded. That is information solely within Blue Cross's

³ It is our understanding that using NOT restrictions will not improperly filter out responsive documents. For example, using a NOT restrictor of "NOT United States" would filter out documents containing only "United States" but not documents containing both the terms "United Healthcare" and "United States." If our understanding is incorrect, please let me know.

Ashley Cummings, Esq.
January 24, 2012
Page 4 of 4

control, and we welcome proposals based on your review of the documents identified by the search strings.

Plaintiffs hope that this proposal will resolve the parties' differences in a way that will allow for completion of fact discovery in the time allotted by the Scheduling Order [Dkt. #67], without need to apply to the court for relief. As always, I am available to discuss any questions you may have.

Best regards,

/s/

Amy R. Fitzpatrick
Trial Attorney

cc: Elizabeth Lippitt, Esq.

Exhibit 13



HUNTON & WILLIAMS LLP
2200 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20037-1701

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

ASHLEY CUMMINGS
DIRECT DIAL: 404-888-4223
EMAIL: acummings@hunton.com

FILE NO: 77535.00002

February 2, 2012

Via Email

Amy Fitzpatrick, Esq.
United States Department of Justice
Antitrust Division, Litigation I Section
Liberty Square Building
450 Fifth Street, NW
Suite 4100
Washington, DC 20530

***United States v. Blue Cross Blue Shield of Michigan,
E.D. Mich., Case No. 2:10-14155***

Dear Amy:

As an initial matter, Blue Cross plans to run the following search strings to collect email for review and production. (The last search-string spreadsheet used to facilitate our conversations is enclosed for your reference.)

Line 3: ("most favored" OR "most-favored") w/3 (nation OR discount OR price OR pricing OR customer OR clause)

Line 4: MFN

Line 5: MFD

Line 6: MFP

Line 7: MFC

Line 8: "favored pricing"

Line 9: "favorable pricing"

Line 10: favorab* w/5 (rate OR price OR discount OR pricing)



Amy Fitzpatrick
February 2, 2012
Page 2

Line 11: favored w/2 (discount OR nation OR price OR rate OR provider OR insurer OR hospital)

Line 12: parity w/10 (nation OR discount OR price OR pricing OR favored OR rate)

Line 13: differential NOT "differential diagnosis"

Line 14: attest* w/10 (nation OR discount OR price OR pricing OR favored OR rate)

Line 15: violat* w/10 (nation OR discount OR price OR pricing OR favored OR rate)

Line 16: (price OR pricing OR discount w/3 guarantee*)

Line 17: "hold harmless" w/5 (MHA OR "Michigan Hospital Association" OR ("Michigan Health" w/ 2 "Hospital Association") OR PHA OR "participating hospital agreement" OR "peer group" OR PG5)

Line 18: ("peer group 5" OR PG5) w/5 (hospital OR "work group" OR workgroup)

Line 19: antitrust

Line 20: anti-trust

Line 23: market w/5 (share OR strateg* OR compet* OR entry OR enter OR entrance OR exit OR penetrat* OR threat OR streng* or domina* OR Power OR group OR individ*)

Line 26: "next best" w/2 pric*

Line 28: (advantage OR disadvantage OR rating OR rate OR premium) w/5 (Priority OR United OR UH* OR Principal OR (Aetna OR Cofinity OR PPOM OR HAP or "Health Alliance Plan" OR PHP OR "Physicians Health Plan" OR "Health Plus" OR Health+ OR Humana OR Cigna OR UPHP OR McLaren OR Assurant OR Coventry OR Multiplan OR "Trinity Health Plan" OR "Upper Peninsula Health")

Line 30: threat* w/50 streng* w/50 weak*



Amy Fitzpatrick
February 2, 2012
Page 3

Line 32: ("business plan" OR "sales plan" OR "market plan" OR "strategic plan")
AND (compet* OR entry OR enter* OR entrance OR exit* OR penetrat* OR threat*
OR streng* or domina*)

Line 38: "regional investment"

Line 39: region* w/3 rating

Line 43: (margin OR margins) w/5 (group OR individual OR ASC OR ASO OR
stop-loss OR "stop loss" OR hospital)

Line 44: (margin OR margins) AND (Aetna OR United OR UH* OR Priority OR
Cofinity OR PHP or McLaren OR HealthPlus OR Health+ OR "Health Plus" OR HAP
OR competit*)

Line 45: ("medical loss ratio" OR MLR OR "benefit cost ratio" OR BCR) AND
(Aetna OR United OR UH* OR Priority OR Cofinity OR PHP or McLaren OR
HealthPlus OR Health+ OR "Health Plus" OR HAP OR competit*)

Line 48: market w/5 (defin* OR MSA OR county OR bound*)

Blue Cross will run these search strings while the parties continue to negotiate the remaining search strings identified as potentially problematic. Should one of these search strings pull back an unexpected, unmanageable number of results, we reserve the right to revisit that string. We will review the documents identified by these searches promptly but will not agree to the schedule proposed in your January 24, 2012 letter. As we have stated repeatedly, until we know how many documents the searches in fact identify for review, we cannot and will not commit to a schedule for their production.

Regarding Line 21 (DOJ) and Line 25 (monopol*), please explain why the Department believes that these searches are reasonably likely to identify documents that are either relevant or reasonably calculated to lead to the discovery of admissible evidence.

By copy of this letter, we notify the private class plaintiffs and Aetna of our intent to run these search strings, all of whom have previously received copies of the proposed search strings and have had an opportunity to comment on them. Aetna has provided comments on



Amy Fitzpatrick
February 2, 2012
Page 4

the search strings. We have received no comments from the private class plaintiffs, therefore, we understand their silence to be assent.

Sincerely,

A handwritten signature in cursive script that reads "Ashley Cummings" followed by the initials "ASHC".

Ashley Cummings

Enclosure

cc: Elizabeth Lippitt, Esq.
Todd M. Stenerson, Esq.
Josh Lipton, Esq.
Dan Matheson, Esq.
John Tangren, Esq.

Exhibit 14



HUNTON & WILLIAMS LLP
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ASHLEY CUMMINGS
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February 7, 2012

FILE NO: 77535.00002

Via Email

Amy Fitzpatrick, Esq.
United States Department of Justice
Antitrust Division, Litigation I Section
Liberty Square Building
450 Fifth Street, NW
Suite 4100
Washington, DC 20530

United States v. Blue Cross Blue Shield of Michigan,
E.D. Mich., Case No. 2:10-14155

Dear Amy:

Today you indicated that Plaintiffs intend to file two motions to compel, one seeking to compel Blue Cross to produce BCN documents and another seeking to compel production of Blue Cross emails by March 30. With respect to the issue concerning BCN documents, we agree that the parties are at an impasse. Your anticipated motion concerning Blue Cross emails, however, is premature and ill-conceived.

As you know, Blue Cross is making every effort to coordinate with the various litigants in the multiple cases engendered by the Department's action the search terms that will be used to identify Blue Cross email for review and production, so that the company can pull the email once. It is an extremely expensive, burdensome and time-consuming process to pull this information, and it would be unreasonable and inappropriate to require Blue Cross to undertake this burden more than once. And as you know, because of these ongoing discussions, Blue Cross has not yet pulled or begun to review emails. It would be physically impossible to do so before March 30. Your motion seeking to compel production of these documents by March 30 is, therefore, a transparent attempt to expand these proceedings, increase Blue Cross's costs and trouble the Court unnecessarily.

We understand and share your frustration with the private class plaintiffs' refusal to respond regarding the proposed search terms. (As reflected in Mr. Hedlund's letter circulated yesterday afternoon, the private class plaintiffs refuse to "assent" to the proposed search terms and are "reserving rights" to request additional search terms and custodians in the future



Amy Fitzpatrick, Esq.
February 7, 2012
Page 2

because they are not “familiar enough” with Blue Cross’s documents or the issues in the lawsuits they filed stretching back over a year ago—this, despite their having had nearly 70,000 Blue Cross documents since November 2011 and having attended every deposition to date.) Blue Cross, too, would like to finalize the search terms and proceed.

We request that you give us one more week to attempt to reach agreement with all litigants regarding the search terms to be used. We think the sensible way to proceed is to try to get everyone’s position regarding the proposed search terms within the next week and, if there remains any disagreement, ask the Court to resolve the disagreement so that Blue Cross need only undertake once the burden of pulling and reviewing the email documents.

Sincerely,

A handwritten signature in cursive script that reads "Ashley Cummings".

Ashley Cummings

Enclosure

cc: Elizabeth Lippitt, Esq.
Todd M. Stenerson, Esq.

Exhibit 15

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

_____)	
UNITED STATES OF AMERICA and the)	
STATE OF MICHIGAN,)	
)	
Plaintiffs,)	
v.	)	Civil Action No.2:10-cv-1455-DPH-MKM
	)	Hon. Denise Page Hood
BLUE CROSS BLUE SHIELD OF	)	Mag. Judge Mona K. Majzoub
MICHIGAN, a Michigan nonprofit)	
healthcare corporation,)	
)	
Defendant.)	
_____)	

DECLARATION OF AMY R. FITZPATRICK REGARDING PLAINTIFFS’ SEALED MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS RESPONSIVE TO PLAINTIFFS’ SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

1. My name is Amy R. Fitzpatrick. I am an attorney with the Antitrust Division of the United States Department of Justice, and have been the United States’ primary point of contact with defendant, Blue Cross Blue Shield of Michigan (“BCBSM”), during negotiations over BCBSM’s production of email in response to Plaintiffs’ Second Request for Production of Documents (“Plaintiffs’ Second Request”). I have been a party to all of the conversations summarized below, and therefore submit this declaration based on personal knowledge.

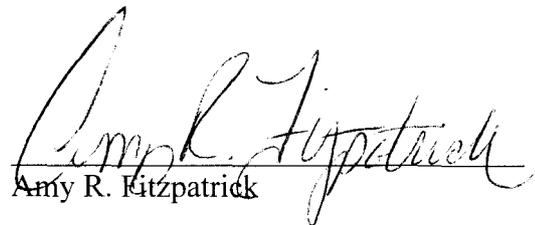
2. After BCBSM served its objections and responses to Plaintiffs’ Second Request on September 6, 2011, the parties agreed in a telephone call on September 8, 2011, that BCBSM would use search terms and search strings to locate responsive email, that the email search would be limited to specific custodians, and that the parties would agree on search terms to be used.

3. In a telephone call on November 10, 2011, plaintiffs asked BCBSM to propose and agree to a schedule for the completion of its production of documents, including email, in response to Plaintiffs’ Second Request.

4. In a telephone call on November 17, 2011, plaintiffs asked BCBSM to propose and agree to a schedule for the completion of its production of documents, including email, in response to Plaintiffs’ Second Request.

5. On November 22, 2011, BCBSM notified plaintiffs by telephone that it would begin running email searches using the 45 search strings identified in plaintiffs' letter of November 16, 2011, on BCBSM's database of email.
6. On November 22, 2011, BCBSM informed plaintiffs during a telephone call that the person who would run the email searches was on vacation.
7. On December 1, 2011, BCBSM informed plaintiffs during a telephone call that the person who would run the email searches was still on vacation.
8. On December 9, 2011, BCBSM reported to plaintiffs during a telephone call that the search strings were being tested, and that BCBSM would inform plaintiffs of any terms that were resulting in larger-than-expected results.
9. On December 15, 2011, BCBSM again reported to plaintiffs during a telephone call that the search strings were being tested, and that BCBSM would inform plaintiffs of any terms that were resulting in larger-than-expected results.

I declare under penalty of perjury that the foregoing is correct to the best of my knowledge.


Amy R. Fitzpatrick

Executed on February 10, 2012.

Exhibit 16

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA
and the STATE OF MICHIGAN,

Plaintiffs,

v.

Civil Action No. 10-cv-14155-DPH-MKM
Hon. Denise Page Hood
Hon. Mona K. Majzoub

BLUE CROSS BLUE SHIELD OF
MICHIGAN, a Michigan nonprofit
healthcare corporation,

Defendant.

**DEFENDANT BLUE CROSS BLUE SHIELD OF MICHIGAN'S
OBJECTIONS AND RESPONSES TO PLAINTIFFS' SECOND
REQUEST FOR PRODUCTION OF DOCUMENTS**

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Thomas G. McNeill (P36895)
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Todd M. Stenerson (P51953)
D. Bruce Hoffman (Adm. E.D. MI, DC Bar 495385)
Neil K. Gilman (Adm. E.D. MI, DC Bar 449226)
Marty Steinberg (E.D. MI Admission pending; DC
Bar 996403)
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Robert A. Phillips (P58496)
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**BLUE CROSS'S OBJECTIONS AND RESPONSES TO PLAINTIFFS'
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Eastern District of Michigan, Defendant Blue Cross Blue Shield of Michigan ("Blue Cross") objects and responds to Plaintiffs' Second Request for Production of Documents.

I. RESERVATION OF RIGHTS

As to all matters referred to in these objections and responses to Plaintiffs' Second Requests, Blue Cross's investigation and discovery is ongoing and Blue Cross reserves the right to amend and supplement its responses and to raise any additional objections it may have in the future. The specific responses set forth below, and any production made pursuant to the accompanying Requests, are based upon, and necessarily limited by, information now available to Blue Cross based upon reasonable and diligent investigation conducted to date. Blue Cross reserves the right to modify and supplement the objections and responses and to present in any proceeding and at trial any further documents and information obtained during discovery and preparation for trial.

Blue Cross further reserves the right to designate any responsive, non-privileged documents produced by Blue Cross as "Confidential" and thus subject to the terms of the Stipulated Protective Order Concerning Confidentiality entered March 16, 2011.

II. GENERAL OBJECTIONS

The following general objections apply to each of Plaintiffs' document requests and, unless otherwise stated, shall have the same force and effect as if set forth in full in response to each of the numbered document requests.

1. Blue Cross objects generally to Plaintiffs' Second Requests on the grounds and to the extent that they seek to impose requirements that are beyond the scope of the Federal Rules and Local Rules; Blue Cross will comply with all applicable rules.

2. Blue Cross objects generally to Plaintiffs' Second Requests to the extent that they request documents that are not reasonably accessible due to undue burden or cost pursuant to Fed. R. Civ. P. 26(b)(2)(B).

3. Blue Cross objects generally to Plaintiffs' Second Requests as unduly burdensome to the extent that they request documents in the possession of third parties, including its outside counsel, or to create documents not presently in its files. Blue Cross further objects to each document request to the extent it requests documents that are in the public domain and are therefore equally available to all parties. Blue Cross will produce documents only to the extent those documents are not publicly available or otherwise in Plaintiffs' possession.

4. Blue Cross objects generally to Plaintiffs' Second Requests to the extent that they seek the production of documents that were prepared in anticipation of litigation, constitute attorney work product, contain privileged attorney-client communications, are subject to the common interest privilege, are subject to the joint defense privilege, or are otherwise privileged.

5. Blue Cross objects generally to Plaintiffs' Second Requests as unduly burdensome to the extent that they may be interpreted as seeking the production of documents previously produced by Blue Cross in response to CID Nos. 25793, 25887, or 25965. Moreover, Blue Cross will not re-apply the same search terms applied in the collection of email responsive to CID No. 25965 to custodians previously searched because that will only duplicate the CID production. In the case of any additional email responsive to Plaintiffs' Second Requests, such emails will be identified using reasonable search terms.

6. Blue Cross objects to DEFINITION A on the grounds that Plaintiffs' purported definition of the terms "you," "your company," "BCBSM," and "the company" is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Blue Cross will produce its own documents, not those of its affiliates or subsidiaries.

7. Blue Cross objects to DEFINITION D as overbroad and unduly burdensome to the extent it seeks the production of documents not in Blue Cross's possession, custody, or control.

8. Blue Cross objects to DEFINITION E as overbroad, unduly burdensome, and vague and ambiguous. Blue Cross further objects to DEFINITION E to the extent it purports to accurately define the relevant product markets.

9. Blue Cross objects to DEFINITION F as overbroad and unduly burdensome. Blue Cross further objects to DEFINITION F to the extent it purports to accurately define the relevant product markets.

10. Blue Cross objects to DEFINITION G as overbroad and unduly burdensome. Blue Cross further objects to DEFINITION G to the extent it purports to accurately define the relevant product markets.

11. Blue Cross objects to DEFINITION H as overbroad and unduly burdensome. Blue Cross further objects to DEFINITION H to the extent it purports to accurately define the relevant product markets.

12. Blue Cross objects to DEFINITION I as overbroad and unduly burdensome to the extent that it seeks the production of documents not in Blue Cross's possession, custody, or control and to the extent that it seeks the production of documents already in Plaintiffs' possession, custody, or control.

13. Blue Cross objects to DEFINITION J as vague and ambiguous.
14. Blue Cross objects to DEFINITION L as overbroad and unduly burdensome to the extent it seeks the production of documents not in Blue Cross's possession, custody, or control.
15. Blue Cross objects to DEFINITION M as overbroad, unduly burdensome, and not reasonably calculated to lead the discovery of admissible evidence.
16. Blue Cross objects to DEFINITION N as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks to define the term "document" more broadly than or impose on Blue Cross obligations beyond those imposed in Fed. R. Civ. P. 34(a)(1)(A).
17. Blue Cross objects to DEFINITION O as vague and ambiguous.
18. Blue Cross objects to DEFINITION P as vague and ambiguous.
19. Blue Cross objects to DEFINITION Q as overbroad and unduly burdensome to the extent that it seeks the production of documents not in Blue Cross's possession, custody, or control.
20. Blue Cross objects to DEFINITION S as overbroad, unduly burdensome, and vague and ambiguous.
21. Blue Cross objects to DEFINITION V as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.
22. Blue Cross objects to DEFINITION X as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Blue Cross further objects to DEFINITION X to the extent it purports to accurately define the relevant geographic markets.
23. Blue Cross objects to DEFINITION Y as vague and ambiguous.

24. Blue Cross objects to INSTRUCTION C as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

25. Blue Cross objects to INSTRUCTION D as vague and ambiguous, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence.

26. Blue Cross objects to INSTRUCTION H to the extent it seeks to impose obligations on Blue Cross beyond those required under the Federal Rules of Civil Procedure.

III. SPECIFIC OBJECTIONS

DOCUMENT REQUEST NO. 8:

All documents, prepared since January 1, 2005, from **BCBSM's** central files and from the files of the 16 custodians identified below, discussing any **MFN provision** with any **Michigan hospitals**, or **MFN provisions** generally with **Michigan hospitals**, including:

- a. discussions or negotiations with any **Michigan hospital** or with the **MHA** relating to **MFNs** or reimbursement rates;
- b. actual or contemplated strategies, purposes, advantages, or disadvantages to **BCBSM** from using any **MFN**;
- c. any actual or possible savings or other benefits or efficiencies from any **BCBSM MFN provision**;
- d. any actual or possible effect of any **MFN** on the **hospital** reimbursement rates paid by **BCBSM** or any other **commercial health insurer**; or
- e. any **hospital's** compliance, non-compliance, waiver of compliance, or strategies for complying with a **BCBSM MFN**.

Custodians:

- | | | |
|------|-------------------|--------------------------------|
| (1) | Daniel Loepf | CEO |
| (2) | Kevin Klobucar | BCN CEO |
| (3) | Sue Barkell | Senior Vice President |
| (4) | Michael Schwartz | Consultant; formerly Senior VP |
| (5) | Tom Simmer | Senior Vice President |
| (6) | Lynda Rossi | Senior Vice President |
| (7) | Mark Johnson | Vice President |
| (8) | Mary Smith | Vice President |
| (9) | Gary Gavin | Vice President |
| (10) | Kathryn Levine | Vice President |
| (11) | John Dunn | Vice President |
| (12) | Martha Spenny | Director |
| (13) | Kelley Monterusso | Director |
| (14) | Austin Wallace | former Manager |
| (15) | Eric Kropfleiter | Senior Analyst |
| (16) | Connie Hoveland | Provider Contracting |

RESPONSE TO REQUEST NO. 8:

Blue Cross objects to Request No. 8 to the extent it seeks information, documents, or communications that are protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other privilege. Blue Cross further objects to Request No. 8 as overbroad and unduly burdensome because the phrase “relating to” could be interpreted to call for an expansive number of documents that would be impossible to identify with a reasonable search and seeks material that is beyond the scope of permissible discovery. Blue Cross also objects on the basis that Blue Cross does not have any “central files.”

Subject to and without waiving these objections or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 9:

For any **Michigan hospital** with which **BCBSM** has had an **MFN** at any time since January 1, 2004, all documents discussing any **Michigan hospital’s** actual or possible rate increase to any **commercial health insurer** other than **BCBSM**, including the reasons for any rate increase.

RESPONSE TO REQUEST NO. 9:

Blue Cross objects to the phrase “any Michigan hospital’s actual or possible rate increase” in Request No. 9 as vague; Blue Cross will treat this Request as seeking information about Michigan hospitals referenced in the first part of the Request with which Blue Cross has had an MFN at any time since January 1, 2004.

Subject to and without waiving this objection or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 10:

All documents, since January 1, 2005, relating to any external communication by BCBSM or its attorneys, including any communication with the **MHA**, any **Michigan hospital**, Consortium Health Plans, the Blue Cross Blue Shield Association (BCBSA), or any BCBSA licensee other than BCBSM, or the Michigan Office of Financial and Insurance Regulation, discussing **MFN provisions** included in, applying to, or that may apply to any contract with any **Michigan hospital**, including:

- a. the legality of any **BCBSM MFN provision**;
- b. **BCBSM's** actual or possible enforcement of any actual or contemplated **BCBSM MFN provision**;
- c. any actual or contemplated indemnification or hold harmless provision relating to any **BCBSM MFN provision**;
- d. this lawsuit, the possibility of this lawsuit, or the investigation into **BCBSM's MFN provisions** preceding this lawsuit; or
- e. any other actual or potential lawsuit relating to **BCBSM's** use of **MFN provisions** in any **Michigan hospital** contracts.

RESPONSE TO REQUEST NO. 10:

Blue Cross objects to Request No. 10 to the extent it seeks information, documents, or communications that are protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other privilege. Blue Cross further objects to Request No. 10 parts (d) and (e) as neither relevant to this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Blue Cross further objects to Request No. 10 to the extent it seeks “any communication . . . discussing MFN provisions included in, applying to, or that *may apply* to any contract with *any* Michigan hospital” as overbroad, unduly burdensome and not reasonably calculated to lead to the discovery for admissible evidence. Blue Cross further objects to Request No. 10 to the extent it calls for Blue Cross to reach legal conclusions in identifying responsive documents in that it seeks information relating to the legality of any MFN provision, the possibility of this lawsuit, and any other actual or potential lawsuit.

Subject to and without waiving these objections or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 11:

All documents discussing how **BCBSM**'s use of **MFNs** may relate to:

- a. **BCBSM**'s actual or claimed "social mission," or **BCBSM**'s actual or claimed role or obligations as "insurer of last resort," as those terms are used in **BCBSM**'s initial disclosures of July 15, 2011 ; or
- b. any other state regulations unique to **BCBSM**.

RESPONSE TO REQUEST NO. 11:

Subject to and without waiving its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 12:

All documents, prepared since January 1, 2005, from **BCBSM**'s central files and from the files of the 16 custodians identified in Request 8, discussing negotiations, contracting, or contracting strategy with any **Michigan hospital**, including:

- a. actual or estimated reimbursement rates that any **Michigan hospital** charges to **BCBSM** or any other **commercial health insurer**;
- b. any **BCBSM** competitive advantages or disadvantages in the purchase or sale of **hospital** services in any geographic area in Michigan;
- c. any **Michigan hospital**'s actual or potential termination or notice of termination of a contract with **BCBSM** or any other **commercial health insurer**; or
- d. competition in the purchase of **hospital** services.

RESPONSE TO REQUEST NO. 12:

Blue Cross objects to Request No. 12 as overbroad and unduly burdensome. Blue Cross further objects to Request No. 12 on the basis that Blue Cross does not have any "central files."

Subject to and without waiving these objections or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 13:

All documents relating to all **BCBSM** contract negotiations, since January 1, 2006, with the following **Michigan hospital systems** (including individual hospitals within each system) and individual **Michigan hospitals**, including their predecessors:

- a. Oakwood Healthcare;
- b. Henry Ford Health;
- c. Detroit Medical Center;
- d. Trinity Health;
- e. McLaren Health;
- f. University of Michigan;
- g. Spectrum Health;
- h. Northern Michigan Regional Hospital;
- i. Allegiance Health;
- j. Bronson Methodist Hospital;
- k. Lakeland HealthCare; and
- l. Sturgis Hospital.

RESPONSE TO REQUEST NO. 13:

Blue Cross objects to Request No. 13 to the extent it seeks information, documents, or communications that are protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other privilege. Blue Cross further objects to Request No. 13 as overbroad and unduly burdensome because the phrase “relating to” as used in this Request could be interpreted to call for an expansive number of documents that would be impossible to identify with a reasonable search.

Subject to and without waiving these objections or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 14:

All documents, since January 1, 2004, not previously produced, relating to all **BCBSM** contract negotiations with the following **Michigan hospital systems** (including individual hospitals within each system) and individual **Michigan hospitals**, including their predecessors:

- a. William Beaumont Hospitals;
- b. Marquette General Hospital;
- c. Metro Health;
- d. Covenant Medical Center; and
- e. Munson Medical Center.

RESPONSE TO REQUEST NO. 14:

Blue Cross objects to Request No. 14 to the extent it seeks information, documents, or communications that are protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other privilege. Blue Cross further objects to Request No. 14 as overbroad and unduly burdensome because the phrase “relating to” as used in this Request could be interpreted to call for an expansive number of documents that would be impossible to identify with a reasonable search.

Subject to and without waiving these objections or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 15:

One final, signed version of each **BCBSM** contract with any **Michigan hospital** or **Michigan hospital system** that was executed since April 13, 2010.

RESPONSE TO REQUEST NO. 15:

Subject to and without waiving its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 16:

One final, signed version of each BCBSM contract currently in effect with each of the following **Michigan hospitals** or **Michigan hospital systems**:

- a. Allegiance Health System
- b. Alpena Regional Medical Center
- c. Bixby Medical Center
- d. Central Michigan Community Hospital
- e. Cheboygan Memorial Hospital
- f. Chippewa County War Memorial Hospital
- g. Community Health Center of Branch County
- h. Dickinson County Healthcare System
- i. Hayes Green Beach Memorial Hospital
- j. Herrick Memorial Hospital
- k. Hillsdale Community Health Center
- l. Huron Medical Center
- m. Mercy Memorial Hospital

- n. Northern Michigan Regional Hospital
- o. Portage Health System
- p. Schoolcraft Memorial Hospital
- q. Spectrum Health (United, Kelsey, and Reed City Hospitals)
- r. William Beaumont Hospitals
- s. Zeeland Community Hospital

RESPONSE TO REQUEST NO. 16:

Subject to and without waiving its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 17:

One final, signed copy of the contract between **BCBSM** and each of the following **Michigan hospitals** that immediately preceded the first contract containing an MFN provision entered between **BCBSM** and that **hospital**, for the following **Michigan hospitals**:

- a. Allegiance Health
- b. Alpena Regional Medical Center
- c. Marlette Regional Hospital
- d. Sparrow Hospital
- e. Spectrum Health (Butterworth/Blodgett, United, Kelsey, Reed City)
- f. Cheboygan Memorial Hospital
- g. Community Health Center of Branch County
- h. Covenant Medical Center
- i. Herrick Medical Center
- j. Mercy Health Partners (Lakeshore)
- k. Metro Health Hospital
- l. Mid-Michigan (Midland, Clare, Gladwin)
- m. Munson Medical Center
- n. Pennock Hospital

RESPONSE TO REQUEST NO. 17:

Subject to and without waiving its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 18:

All documents, prepared since January 1, 2005, from **BCBSM**'s central files and from the files of the 16 custodians identified in Request 8, discussing competition in the sale of health insurance in any geographic area in Michigan, including:

- a. any **BCBSM** competitive advantage or disadvantage;
- b. business plans, strategic plans, and marketing plans that discuss any **commercial health insurance products** or any strategies of **BCBSM** or any other **commercial health insurer**;
- c. market shares for any **commercial health insurer or product**; or
- d. **BCBSM**'s or any other **commercial health insurer's** pricing strategies or policies.

RESPONSE TO REQUEST NO. 18:

Blue Cross objects to the terms "competitive advantage" or "disadvantage" in Request No. 18 as vague and undefined. Blue Cross further objects to Request No. 18 as overbroad and unduly burdensome in that the phrase "discussing competition in the sale of health insurance" as used in this Request could be interpreted to call for an expansive number of documents that would be impossible to identify with a reasonable search. Moreover, Blue Cross objects to Request No. 18 on the basis that Blue Cross does not have any "central files."

Subject to and without waiving these objections or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 19:

All documents discussing, for any **Michigan hospital**:

- a. any **BCBSM** discount differential or discount advantage, including any factors causing the discount differential or discount advantage;
- b. how **BCBSM**'s **hospital** reimbursement rates or discounts compare to those of any other **commercial health insurer**;
- c. any analysis of **hospital** discount differentials performed by any consulting firm or other outside group, including Consortium Health Plans, Blue Cross Blue Shield Association, Hewitt, McKinsey, and Milliman;
- d. how **BCBSM**'s hospital rates or discounts affect **BCBSM**'s overall costs or expenses; or
- e. how any **BCBSM** advantage or disadvantage in **hospital** rates or discounts affects or causes any **BCBSM** advantage or disadvantage in overall costs or expenses.

RESPONSE TO REQUEST NO. 19:

Blue Cross objects to Request No. 19 to the extent it seeks information, documents, or communications that are protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other privilege. Blue Cross further objects to Request No. 19 as overbroad and unduly burdensome to the extent it seeks the production of documents not in the possession, custody, or control of Blue Cross. Blue Cross further objects to the phrases “discount differential,” “discount advantage,” or “factors causing the discount differential or discount advantage” in Request No. 19 as vague and undefined.

Subject to and without waiving these objections or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 20:

All documents discussing the benefits or advantages or lack of benefits or disadvantages, for **BCBSM** or any other **commercial health insurer**, of including any **Michigan hospital or hospitals** in its **commercial health insurance** provider network, including, but not limited to;

- a. the actual or possible impact of termination or de-participation of a **hospital** from the provider network on **BCBSM** or any other **commercial health insurer’s hospital** rates, medical expenses, or the marketability of any **commercial health insurance products**;
- b. any actual or potential obstacles to **BCBSM** or any other **commercial health insurer** having its enrollees use any **hospital** other than the (potentially) terminating or de-participating **hospital**; or
- c. any restriction or limitation, including any statute or regulation, on the ability of **BCBSM** or any other **commercial health insurer** to de-participate with a **hospital** or terminate a **hospital** from its provider network.

RESPONSE TO REQUEST NO. 20:

Blue Cross objects to Request No. 20 to the extent it seeks information, documents, or communications that are protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other privilege. Blue Cross further objects to Request No. 20 as overbroad and unduly burdensome to the extent it seeks the production of documents not in Blue Cross’s possession, custody, or control.

Subject to and without waiving these objections or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 21:

All documents discussing any actual or contemplated practice, mechanism, or arrangement, including any steering or tiering arrangement, by **BCBSM** or any other **commercial health insurer**, to incentivize or encourage its **commercial health insurance** members to use more efficient or lower-cost **Michigan hospitals** instead of less efficient or higher-cost **Michigan hospitals**, including any actual or possible obstacles or disadvantages to implementing any such practice, mechanism, or arrangement.

RESPONSE TO REQUEST NO. 21:

Blue Cross objects to Request No. 21 to the extent it seeks information, documents, or communications that are protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other privilege. Blue Cross further objects to Request No. 21 as overbroad and unduly burdensome to the extent it seeks the production of documents not in Blue Cross's possession, custody, or control.

Subject to and without waiving these objections or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 22:

- Documents sufficient to show, separately for each year from 2004 to 2010, **BCBSM's**
- a. average annual update factor or annual rate update for all **Michigan hospitals**, and how the update was calculated; or
 - b. annual update factor or annual rate update for each **Michigan hospital**.

RESPONSE TO REQUEST NO. 22:

Subject to and without waiving its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 23:

Documents sufficient to show all of **BCBSM's** policies, procedures and guidelines, in effect at any time since January 1, 2007, for pricing and underwriting **commercial health insurance products**, for each of the following segments of **commercial health insurance** customers:

- a. **self-funded group** customers;
- b. **experience-rated group** customers;
- c. **community-rated group** customers; or
- d. **commercial individual** customers.

RESPONSE TO REQUEST NO. 23:

Blue Cross objects to Request No. 23 as overbroad and unduly burdensome in that the phrase “policies, procedures and guidelines . . . for pricing and underwriting commercial health insurance products” as used in this Request could be interpreted to call for an expansive number of documents that would be impossible to identify with a reasonable search.

Subject to and without waiving this objection or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search. In addition, P.A. 350 contains information responsive to Request No. 23.

DOCUMENT REQUEST NO. 24:

Documents, including all minutes, summaries, reports, presentations and analyses, since January 1, 2006, discussing pricing recommendations, pricing analyses, pricing decisions, and any factors considered in price changes, for any of the following segments of **commercial health insurance** customers:

- a. **self-funded group** customers;
- b. **experience-rated group** customers;
- c. **community-rated group** customers; or
- d. **commercial individual** customers.

RESPONSE TO REQUEST NO. 24:

Blue Cross objects to Request No. 24 as overbroad and unduly burdensome in that the phrase “discussing pricing recommendations, pricing analyses, pricing decisions, and any factors considered in price changes” as used in this Request could be interpreted to call for an expansive

number of documents that would be impossible to identify with a reasonable search.

Subject to and without waiving this objection or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 25:

All documents, since January 1, 2006, relating to **BCBSM's** or Blue Care Network's consideration of, and any reasons for or against, any actual or contemplated creation of new geographic rating regions, division of existing geographic rating regions, or changes to the boundaries of geographic rating regions, for pricing its **commercial group health or individual health insurance products**, including documents discussing **BCBSM** dividing its:

- a. southwest rating region (region #3) and creating a new geographic rating region in southwest Michigan; or
- b. geographic rating region for the northern lower peninsula into two or more regions.

RESPONSE TO REQUEST NO. 25:

Blue Cross objects to Request No. 25 to the extent that the phrase "relating to" could be interpreted to call for an expansive number of documents that would be impossible to identify with a reasonable search and seeks material that is beyond the scope of permissible discovery.

Subject to and without waiving this objection or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 26:

For each **Michigan hospital** system or **hospital** with which **BCBSM** has negotiated reimbursement rates since January 1, 2006, all documents discussing how any actual or proposed change in hospital reimbursement rates has affected or may affect the prices, fees or premiums that **BCBSM** or any other **commercial health insurer** may charge any of its **fully-insured** or **self-funded commercial health insurance** customers.

RESPONSE TO REQUEST NO. 26:

Blue Cross objects to Request No. 26 to the extent it seeks information, documents, or communications that are protected from disclosure by the attorney-client privilege, the attorney

work product doctrine, or any other privilege. Blue Cross further objects to Request No. 26 as overbroad and unduly burdensome to the extent it seeks the production of documents not in Blue Cross's possession, custody, or control.

Subject to and without waiving these objections or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 27:

For each of **BCBSM's** five largest **fully insured group** customers and five largest **self-funded group** customers in each **relevant geographic area** (measured by the number of group members residing in that **relevant geographic area**), all documents discussing any:

- a. actual or possible changes to prices or premiums charged by **BCBSM**;
- b. **hospital** rates or discounts, medical expenses, or administrative fees;
- c. comparison of **BCBSM's hospital** discounts or administrative fees to those of any other **commercial health insurer**; or
- d. any actual or possible bids by any **commercial health insurer** other than **BCBSM**, or other competitive factors considered by any commercial health insurer in setting prices or fees.

RESPONSE TO REQUEST NO. 27:

Blue Cross further objects to Request No. 27 as overbroad and unduly burdensome to the extent it seeks the production of documents not in Blue Cross's possession, custody, or control. Blue Cross also objects on the basis that Blue Cross does not maintain in the ordinary course of business documents or analysis categorized according to "largest fully insured group customers" or "largest self-funded group customers" in each "geographic area," nor is Blue Cross's business conducted in the manner described. As such, Blue Cross is unable to respond to Request No. 27.

DOCUMENT REQUEST NO. 28:

All documents, since January 1, 2005, sent to or received from McKinsey or any other consulting firm, discussing strategy or competition in the sale of **commercial health insurance** or in the sale or purchase of **hospital** services, including **Michigan hospital** contract negotiations and **hospital** reimbursement rates.

RESPONSE TO REQUEST NO. 28:

Blue Cross objects to Request No. 28 as overbroad and unduly burdensome to the extent it seeks the production of documents not in Blue Cross's possession, custody, or control, and because the phrase "strategy or competition" as used in this Request could be interpreted to call for an expansive number of documents that would be impossible to identify with a reasonable search and that are neither relevant to this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Blue Cross also objects to the phrase "strategy or competition" in Request No. 28 as vague and undefined.

Subject to and without waiving these objections or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 29:

All documents relating to communications by BCBSM with brokers, consultants, or agents that represent employers or other **commercial group health insurance** customers, including documents relating to Managing Agents meetings, Managing Agents principals meetings, Broker meetings, Agent Councils or Regional Agent Councils, discussing:

- a. any **BCBSM MFN provision**;
- b. **hospital** rates or discounts;
- c. how **hospital** rates or discounts affect the price of **commercial health insurance**;
or
- d. competition in the sale of commercial health insurance.

RESPONSE TO REQUEST NO. 29:

Blue Cross objects to Request No. 29 as overbroad and unduly burdensome to the extent it seeks the production of documents not in Blue Cross's possession, custody, or control, and to the extent that the phrase "relating to" could be interpreted to call for an expansive number of documents that would be impossible to identify with a reasonable search and that are neither relevant to this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these objections, Blue Cross states that it has no documents responsive to Request No. 29 concerning “Managing Agents meetings, Managing Agents principals meetings,” or concerning “Agent Councils or Regional Agent Councils.”

With respect to Request 29 as it pertains to “Broker meetings,” Blue Cross states that the request is vague, overbroad and unduly burdensome. Subject to and without waiving these objections or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 30:

For each of the insurance providers licensed to sell health insurance in Michigan, identified in Exhibit 2 of **BCBSM**’ Initial Disclosures of July 18, 2011, all documents discussing:

- a. that company’s market share in the sale of **commercial group health or commercial individual health insurance** in all or any part of Michigan; or
- b. possible or actual competition from that company’s sale of **commercial group health or commercial individual health insurance** in all or any part of Michigan.

RESPONSE TO REQUEST NO. 30:

Blue Cross objects to Request No. 30 as overbroad and unduly burdensome to the extent it seeks the production of documents not in Blue Cross’s possession, custody, or control. Blue Cross also objects to the phrase “each of the insurance providers licensed to sell health insurance in Michigan” in Request No. 30 because the insurers identified in Blue Cross’s Initial Disclosures Exhibit 2 include all insurers identified by OFIR on its Internet website as “life and health” insurers and OFIR makes no distinction between life insurers and health insurers.

Subject to and without waiving these objections or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search concerning

commercial group health insurers or commercial individual health insurers known to Blue Cross.

DOCUMENT REQUEST NO. 31:

All documents discussing any **BCBSM** actual or contemplated response to any actual or contemplated competitive threat from any **commercial health insurer** in the sale of **commercial health insurance**, including any such response to any such threat from:

- a. Priority Health (including documents relating to the Priority Health Market Share Initiative and the Priority Health SWAT Team);
- b. Aetna or Cofinity/PPOM (including documents relating to any war gaming exercises);
- c. other national **commercial health insurers**, including United, Cigna, and Humana;
- d. other Michigan **commercial health insurers**, including Health Alliance Plan, PHP of Mid-Michigan, Health Plus, and McLaren Health Plan; or
- e. any of the companies identified in Exhibit 2 of **BCBSM**' Initial Disclosures of July 18, 2011.

RESPONSE TO REQUEST NO. 31:

Blue Cross objects to Request No. 31 as overbroad and unduly burdensome because every business action Blue Cross takes could be interpreted to be "in response to any such threat" by a competitor and thus the Request could be interpreted to call for an expansive number of documents that would be impossible to identify with a reasonable search and seeks material that is beyond the scope of permissible discovery. Blue Cross also objects to the phrase "any of the companies identified in Exhibit 2 of BCBM's Initial Disclosures" in Request No. 31(e) because the insurers identified in Blue Cross's Initial Disclosures Exhibit 2 include all insurers identified by OFIR on its Internet website as "life and health" insurers and OFIR makes no distinction between life insurers and health insurers.

Subject to and without waiving these objections or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search, including with respect to Request No. 31(e) documents concerning commercial group health insurers or commercial individual health insurers known to Blue Cross.

DOCUMENT REQUEST NO. 32:

All transcripts of depositions or trial testimony since January 1, 2004, and all affidavits or declarations executed since January 1, 2004, of any **BCBSM** employee, representative or witness, that discuss:

- a. **Michigan hospital** contracts, contract terms, or contract negotiations;
- b. **hospital** rates or discounts, including how hospital rates or discounts affect prices charged for commercial health insurance products;
- c. competition in the purchase or sale of **hospital** services; or
- d. competition in the sale of **commercial health insurance**.

RESPONSE TO REQUEST NO. 32:

Blue Cross objects to Request No. 32 as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Blue Cross also objects to the extent that the requested documents are subject to a protective order in separate litigation.

Subject to and without waiving these objections or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, and subject to any governing protective orders, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 33:

All documents prepared for, reporting on, memorializing, or discussing any meetings, recommendations or decisions of any of the following **BCBSM** committees, work groups, or meetings:

- a. Peer Group 5 work group, Peer Group 5 advisory group, or any other Peer Group 5 group;
- b. Hospital Reimbursement Strategy Work Group;
- c. (Outpatient) Market Based Community Pricing Work Group;
- d. Technical Advisory Group formed to discuss issues relating to Michigan hospital contracting or negotiations;
- e. Hospital contracting staffs monthly or other periodic negotiation status meetings with senior leadership;
- f. "Hospital update" meetings; or
- g. Senior Leadership Oversight Committee formed during negotiations with any Michigan hospital.

RESPONSE TO REQUEST NO. 33:

Blue Cross objects to Request No. 33 as vague, ambiguous, overbroad and unduly burdensome because “*all* documents prepared for, reporting on, memorializing, or discussing *any* meetings, recommendations or decisions of *any* of the listed committees, work groups, or meetings” could be interpreted to call for an expansive number of documents that would be impossible to identify with a reasonable search and that are neither relevant to this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these objections or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents.

DOCUMENT REQUEST NO. 34:

One complete set of minutes for each meeting since April 13, 2010 of the:

- a. PHA Advisory Committee; or
- b. BCBSM Contingent to the PHA Advisory Committee.

RESPONSE TO REQUEST NO. 34:

Subject to and without waiving its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 35:

For each meeting of the PHA Advisory Committee and each meeting of the BCBSM Contingent to the PHA Advisory Committee, since January 1, 2004, one complete set of meeting packets or meeting materials provided to committee members, including presentations, reports, attachments, and assignments logs.

RESPONSE TO REQUEST NO. 35:

Subject to and without waiving its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 36:

For each meeting of the Staff Liaison Group since January 1, 2004, one complete set of:

- a. meeting summaries, other than the previously produced meeting summaries listed in Appendix 36; or
- b. meeting packets or meeting materials provided to members of the Group, including presentations, reports, attachments, and assignments logs.

RESPONSE TO REQUEST NO. 36:

Subject to and without waiving its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 37:

One unredacted copy of each document identified in Appendix 37 that **BCBSM** redacted or withheld from production in response to Civil Investigative Demand # 25965.

RESPONSE TO REQUEST NO. 37:

Blue Cross objects to Request No. 37 because information in the documents subject to Request No. 37 was redacted only to the extent it contained confidential personal information that is neither relevant to CID No. 25965 or this litigation, nor is the redacted information reasonably likely to lead to the discovery of admissible evidence.

DOCUMENT REQUEST NO. 38:

All attachments for linked files, such as spreadsheets, identified in Appendix 38, that were not attached to the source files for the related documents that **BCBSM** previously produced in response to Civil Investigative Demand # 25965.

RESPONSE TO REQUEST NO. 38:

Subject to and without waiving its General Objections, the attorney-client privilege, work product doctrine, or any other privilege, Blue Cross will produce the documents requested in Request No. 38 to the extent such documents can be retrieved or accessed.

DOCUMENT REQUEST NO. 39:

Documents sufficient to show any search terms used by **BCBSM** in its search for or review of electronic documents in response to this Second Request for Production of Documents, Plaintiffs' First Request for Production of Documents, or Civil Investigative Demand # 25965.

RESPONSE TO REQUEST NO. 39:

Blue Cross objects to Request No. 39 to the extent it seeks information, documents, or communications that are protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other privilege. Blue Cross further objects to Request No. 39 on the ground that Blue Cross has previously provided the requested information to Plaintiff the United States.

DOCUMENT REQUEST NO. 40:

Documents sufficient to describe **BCBSM's** document retention, destruction, deletion, storage, archiving and backup policies, procedures, and practices, in effect at any time since January 1, 2004, including:

- a. all documents discussing the policies, procedures, and practices in effect at any time since January 1, 2004 for separated or retired employees;
- b. one copy of **BCBSM's** Records Management Policy dated July 16, 2007, and one copy of each prior Records Management Policy in effect at any time since January 1, 2007; or
- c. all documents discussing retention policies and periods for all categories of documents generated by the hospital contracting or hospital relations departments.

RESPONSE TO REQUEST NO. 40:

Subject to and without waiving its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will produce responsive, non-privileged documents identified after a reasonable search.

DOCUMENT REQUEST NO. 41:

All documents discussing retention, preservation, deletion or destruction of documents, including emails, of:

- a. Kevin Seitz;
- b. Douglas Darland;
- c. Michael Schwartz;
- d. Austin Wallace; and
- e. each other BCBSM management employee who had any responsibility for or oversight over hospital contracting or negotiations, at any time since January 1, 2005, who separated or retired from **BCBSM** or changed departments within **BCBSM**.

RESPONSE TO REQUEST NO. 41:

Subject to and without waiving its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross states that it has no documents responsive to Request No. 41 that are not duplicative of the documents and information that are responsive to Request No. 40.

DOCUMENT REQUEST NO. 42:

Documents sufficient to show, for the **BCBSM** Enterprise Data Warehouse(s), Business Intelligence Data Warehouse(s), and the ClaimsQuest Data Warehouse(s) used for reporting and analysis of rates, discounts, claims, billing, enrollment, and eligibility, the following information:

- a. data dictionaries, including names and descriptions of all tables and fields, data types, and designation of primary keys;
- b. documentation sufficient to identify the logical data structure, such as entity relationship diagrams;
- c. manuals and other documents provided to end users to facilitate understanding and use of the data warehouse(s); or
- d. documents sufficient to identify the person responsible for operating or maintaining the data warehouse(s).

RESPONSE TO REQUEST NO. 42:

Blue Cross objects to the descriptions of the functions and capabilities of the “Enterprise Data Warehouse(s), Business Intelligence Data Warehouse(s), and the Claims Quest Data Warehouse(s)” in Request No. 42 as inaccurate, vague, ambiguous, and the information sought therein as overly broad. Blue Cross further objects to Request No. 42 as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these objections or its General Objections, the attorney-client privilege, the work product doctrine or any other privilege, Blue Cross will engage in good faith discussions to clarify and narrow the Request.

/s/ Todd M. Stenerson
Todd M. Stenerson (P51953)
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Washington, DC 20037
Phone: 202-955-1500
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tstenerson@hunton.com

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2011, I served the foregoing Objections and

Responses via electronic mail on:

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tstenerson@hunton.com

Exhibit 17



ANNUAL STATEMENT

For the Year Ended December 31, 2010
of the Condition and Affairs of the

BLUE CROSS BLUE SHIELD OF MICHIGAN

NAIC Group Code.....572, 572 (Current Period) (Prior Period) NAIC Company Code..... 54291 Employer's ID Number..... 38-2069753
 Organized under the Laws of Michigan State of Domicile or Port of Entry Michigan Country of Domicile US
 Licensed as Business Type.....Hospital, Medical & Dental Service or Is HMO Federally Qualified? Yes [] No [X]
 Indemnity
 Incorporated/Organized..... February 1, 1975 Commenced Business..... January 1, 1975
 Statutory Home Office 600 Lafayette East..... Detroit MI 48226
 (Street and Number) (City or Town, State and Zip Code)
 Main Administrative Office 600 Lafayette East..... Detroit MI 48226 313-225-9000
 (Street and Number) (City or Town, State and Zip Code) (Area Code) (Telephone Number)
 Mail Address 600 Lafayette East..... Detroit MI 48226
 (Street and Number or P. O. Box) (City or Town, State and Zip Code)
 Primary Location of Books and Records 600 Lafayette East..... Detroit MI 48226 313-225-9000
 (Street and Number) (City or Town, State and Zip Code) (Area Code) (Telephone Number)
 Internet Website Address http://bcbsm.com/
 Statutory Statement Contact Kenneth A. Bluhm 313-225-9095
 (Name) (Area Code) (Telephone Number) (Extension)
 kbluhm@bcbsm.com 313-983-2358
 (E-Mail Address) (Fax Number)

OFFICERS

Name	Title	Name	Title
1. DANIEL J. LOEPP	President and CEO	2. MARK R. BARTLETT	Executive Vice President and CFO
3. CAROLYNN WALTON	Vice President and Treasurer	4. TRICIA A. KEITH	VP & Corporate Secretary

OTHER

ELIZABETH R. HAAR	Senior Vice President	ROBERT MILEWSKI	Senior Vice President
JOSEPH H. HOHNER	Executive Vice President	THOMAS L. SIMMER	Senior Vice President
SUSAN L. BARKELL	Senior Vice President	KENNETH R. DALLAFIOR	Senior Vice President
DARRELL E. MIDDLETON	Executive Vice President	LYNDA M. ROSSI #	Senior Vice President

DIRECTORS OR TRUSTEES

JAMES G. AGEE	JON E. BARFIELD	WILLIAM H. BLACK	EDWARD J. CANFIELD DO
DIANE R. GODDEERIS RN,BSN	TERRY W. BURNS	BRIAN M. CONNOLLY	PATRICK J. DEVLIN
MARK T. GAFFNEY	SARAH W. DOYLE	THOMAS J. HADRYCH	JOHN M. HAMILTON
GERALD H. ACKER	WALLACE D. RILEY	SPENCER C. JOHNSON	GARY H. TORGOW
MELVIN L. LARSEN	DANIEL J. LOEPP	F. REMINGTON SPRAGUE MD	GARY J. MCINERNEY
LIVIO MEZZA	EDWARD G. JANKOWSKI MD	ROBERT A. PATZER	RENEE C. AXT
CALVIN T. RAPSON	JAMES W. RICHARDS RPH	IRIS K. SALTERS	JAMES U. SETTLES JR
EDWIN D. SECORD III DDS,MS	GREGORY A. SUDDERTH	S. MARTIN TAYLOR	EMERY I. KLEIN
JEAN L. ROSE	JOHN VANDERMOLEN		

State of.....Michigan
County of.....Wayne

The officers of this reporting entity being duly sworn, each depose and say that they are the described officers of said reporting entity, and that on the reporting period stated above, all of the herein described assets were the absolute property of the said reporting entity, free and clear from any liens or claims thereon, except as herein stated, and that this statement, together with related exhibits, schedules and explanations therein contained, annexed or referred to, is a full and true statement of all the assets and liabilities and of the condition and affairs of the said reporting entity as of the reporting period stated above, and of its income and deductions therefrom for the period ended, and have been completed in accordance with the NAIC *Annual Statement Instructions and Accounting Practices and Procedures* manual except to the extent that: (1) state law may differ; or, (2) that state rules or regulations require differences in reporting not related to accounting practices and procedures, according to the best of their information, knowledge and belief, respectively. Furthermore, the scope of this attestation by the described officers also includes the related corresponding electronic filing with the NAIC, when required, that is an exact copy of the enclosed statement (except for formatting differences due to electronic filing). The electronic filing may be requested by various regulators in lieu of or in addition to the enclosed statement.

_____ (Signature) DANIEL J. LOEPP	_____ (Signature) MARK R. BARTLETT	_____ (Signature) CAROLYNN WALTON
1. (Printed Name) President and CEO	2. (Printed Name) Executive Vice President and CFO	3. (Printed Name) Vice President and Treasurer
_____ (Title)	_____ (Title)	_____ (Title)

Subscribed and sworn to before me
This _____ day of _____

a. Is this an original filing? Yes [X] No []
 b. If no
 1. State the amendment number _____
 2. Date filed _____
 3. Number of pages attached _____

ASSETS

	Current Year			Prior Year
	1 Assets	2 Nonadmitted Assets	3 Net Admitted Assets (Cols. 1 - 2)	4 Net Admitted Assets
1. Bonds (Schedule D).....	3,114,925,181		3,114,925,181	3,054,869,475
2. Stocks (Schedule D):				
2.1 Preferred stocks.....	1,900,362		1,900,362	528,283
2.2 Common stocks.....	1,927,425,022		1,927,425,022	1,667,421,123
3. Mortgage loans on real estate (Schedule B):				
3.1 First liens.....			0	
3.2 Other than first liens.....			0	
4. Real estate (Schedule A):				
4.1 Properties occupied by the company (less \$.....0 encumbrances).....	146,085,962		146,085,962	189,281,103
4.2 Properties held for the production of income (less \$.....0 encumbrances).....			0	
4.3 Properties held for sale (less \$.....0 encumbrances).....	11,818,202		11,818,202	
5. Cash (\$.....(154,324,207), Sch. E-Part 1), cash equivalents (\$.....8,699,493, Sch. E-Part 2) and short-term investments (\$.....262,382,039, Sch. DA).....	116,757,325		116,757,325	60,522,172
6. Contract loans (including \$.....0 premium notes).....			0	
7. Derivatives.....			0	
8. Other invested assets (Schedule BA).....	109,524,433		109,524,433	106,263,234
9. Receivables for securities.....	110,327		110,327	272,447
10. Securities lending reinvested collateral assets.....	417,738,095		417,738,095	
11. Aggregate write-ins for invested assets.....	0	0	0	0
12. Subtotals, cash and invested assets (Lines 1 to 11).....	5,846,284,909	0	5,846,284,909	5,079,157,837
13. Title plants less \$.....0 charged off (for Title insurers only).....			0	
14. Investment income due and accrued.....	29,951,262		29,951,262	27,088,481
15. Premiums and considerations:				
15.1 Uncollected premiums and agents' balances in course of collection.....	86,026,807		86,026,807	87,367,000
15.2 Deferred premiums, agents' balances and installments booked but deferred and not yet due (including \$.....0 earned but unbilled premiums).....			0	
15.3 Accrued retrospective premiums.....			0	
16. Reinsurance:				
16.1 Amounts recoverable from reinsurers.....			0	
16.2 Funds held by or deposited with reinsured companies.....			0	
16.3 Other amounts receivable under reinsurance contracts.....			0	
17. Amounts receivable relating to uninsured plans.....	142,182,820	30,288,499	111,894,321	320,330,382
18.1 Current federal and foreign income tax recoverable and interest thereon.....	156,526,384		156,526,384	
18.2 Net deferred tax asset.....	32,283,030		32,283,030	115,098,691
19. Guaranty funds receivable or on deposit.....			0	
20. Electronic data processing equipment and software.....	144,828,136	100,182,419	44,645,717	42,372,504
21. Furniture and equipment, including health care delivery assets (\$.....0).....	2,612,170	2,612,170	0	0
22. Net adjustment in assets and liabilities due to foreign exchange rates.....			0	
23. Receivables from parent, subsidiaries and affiliates.....	92,583,505		92,583,505	100,977,012
24. Health care (\$.....94,240,513) and other amounts receivable.....	129,343,165	2,334,869	127,008,296	99,477,138
25. Aggregate write-ins for other than invested assets.....	290,657,704	20,239,176	270,418,528	310,607,626
26. Total assets excluding Separate Accounts, Segregated Accounts and Protected Cell Accounts (Lines 12 to 25).....	6,953,279,892	155,657,133	6,797,622,759	6,182,476,671
27. From Separate Accounts, Segregated Accounts and Protected Cell Accounts.....			0	
28. TOTALS (Lines 26 and 27).....	6,953,279,892	155,657,133	6,797,622,759	6,182,476,671

DETAILS OF WRITE-INS

1101.			0	
1102.			0	
1103.			0	
1198. Summary of remaining write-ins for Line 11 from overflow page.....	0	0	0	0
1199. Totals (Lines 1101 thru 1103 plus 1198) (Line 11 above).....	0	0	0	0
2501. Miscellaneous Accounts Receivable.....	8,911,794	8,911,794	0	
2502. Prepaid and Other Assets.....	5,660,295	5,660,295	0	
2503. Interim Payable to Providers.....	275,979,390	5,560,862	270,418,528	310,607,626
2598. Summary of remaining write-ins for Line 25 from overflow page.....	106,225	106,225	0	0
2599. Totals (Lines 2501 thru 2503 plus 2598) (Line 25 above).....	290,657,704	20,239,176	270,418,528	310,607,626

LIABILITIES, CAPITAL AND SURPLUS

	Current Period			Prior Year
	1 Covered	2 Uncovered	3 Total	4 Total
1. Claims unpaid (less \$.....0 reinsurance ceded).....	607,109,810		607,109,810	655,206,666
2. Accrued medical incentive pool and bonus amounts.....	25,463,440		25,463,440	39,680,581
3. Unpaid claims adjustment expenses.....	79,317,143		79,317,143	72,535,603
4. Aggregate health policy reserves.....	880,270,671		880,270,671	871,101,979
5. Aggregate life policy reserves.....			0	
6. Property/casualty unearned premium reserve.....			0	
7. Aggregate health claim reserves.....			0	
8. Premiums received in advance.....			0	
9. General expenses due or accrued.....	160,183,348		160,183,348	176,161,677
10.1 Current federal and foreign income tax payable and interest thereon (including \$.....0 on realized capital gains (losses)).....			0	4,367,031
10.2 Net deferred tax liability.....			0	
11. Ceded reinsurance premiums payable.....	1,427,712		1,427,712	
12. Amounts withheld or retained for the account of others.....	16,251,359		16,251,359	14,664,185
13. Remittances and items not allocated.....	13,265,869		13,265,869	8,054,499
14. Borrowed money (including \$.....0 current) and interest thereon \$.....656,044 (including \$.....0 current).....	694,046,626		694,046,626	708,521,874
15. Amounts due to parent, subsidiaries and affiliates.....	17,144,256		17,144,256	33,116,534
16. Derivatives.....			0	
17. Payable for securities.....	2,217,809		2,217,809	635,697
18. Payable for securities lending.....	417,738,095		417,738,095	
19. Funds held under reinsurance treaties with (\$.....0 authorized reinsurers and \$.....0 unauthorized reinsurers).....			0	
20. Reinsurance in unauthorized companies.....			0	
21. Net adjustments in assets and liabilities due to foreign exchange rates.....			0	
22. Liability for amounts held under uninsured plans.....	209,390,862		209,390,862	185,518,806
23. Aggregate write-ins for other liabilities (including \$.....0 current).....	914,328,202	0	914,328,202	850,681,531
24. Total liabilities (Lines 1 to 23).....	4,038,155,202	0	4,038,155,202	3,620,246,663
25. Aggregate write-ins for special surplus funds.....	XXX	XXX	0	0
26. Common capital stock.....	XXX	XXX		
27. Preferred capital stock.....	XXX	XXX		
28. Gross paid in and contributed surplus.....	XXX	XXX		
29. Surplus notes.....	XXX	XXX		
30. Aggregate write-ins for other than special surplus funds.....	XXX	XXX	0	0
31. Unassigned funds (surplus).....	XXX	XXX	2,759,467,557	2,562,230,008
32. Less treasury stock at cost:				
32.1 .....0.000 shares common (value included in Line 26 \$.....0).....	XXX	XXX		
32.2 .....0.000 shares preferred (value included in Line 27 \$.....0).....	XXX	XXX		
33. Total capital and surplus (Lines 25 to 31 minus Line 32).....	XXX	XXX	2,759,467,557	2,562,230,008
34. Total liabilities, capital and surplus (Lines 24 and 33).....	XXX	XXX	6,797,622,759	6,182,476,671

DETAILS OF WRITE-INS

2301. Postretirement Liabilities.....	742,650,580		742,650,580	641,911,365
2302. Liability for Uncashed Checks.....	13,623,170		13,623,170	11,727,738
2303. Interim Payable to Providers.....	65,985,565		65,985,565	109,296,613
2398. Summary of remaining write-ins for Line 23 from overflow page.....	92,068,887	0	92,068,887	87,745,815
2399. Totals (Lines 2301 thru 2303 plus 2398) (Line 23 above).....	914,328,202	0	914,328,202	850,681,531
2501.	XXX	XXX		
2502.	XXX	XXX		
2503.	XXX	XXX		
2598. Summary of remaining write-ins for Line 25 from overflow page.....	XXX	XXX	0	0
2599. Totals (Lines 2501 thru 2503 plus 2598) (Line 25 above).....	XXX	XXX	0	0
3001.	XXX	XXX		
3002.	XXX	XXX		
3003.	XXX	XXX		
3098. Summary of remaining write-ins for Line 30 from overflow page.....	XXX	XXX	0	0
3099. Totals (Lines 3001 thru 3003 plus 3098) (Line 30 above).....	XXX	XXX	0	0

STATEMENT OF REVENUE AND EXPENSES

	Current Year		Prior Year
	1 Uncovered	2 Total	3 Total
1. Member months.....	.XXX	18,757,735	20,470,544
2. Net premium income (including \$.....0 non-health premium income).....	.XXX	6,558,172,279	6,855,338,281
3. Change in unearned premium reserves and reserve for rate credits.....	.XXX	16,520,156	131,055,612
4. Fee-for-service (net of \$.....0 medical expenses).....	.XXX		
5. Risk revenue.....	.XXX		
6. Aggregate write-ins for other health care related revenues.....	.XXX	.0	.0
7. Aggregate write-ins for other non-health revenues.....	.XXX	.0	.0
8. Total revenues (Lines 2 to 7).....	.XXX	6,574,692,435	6,986,393,893
Hospital and Medical:			
9. Hospital/medical benefits.....		4,748,456,970	5,267,286,423
10. Other professional services.....		101,315,220	93,584,341
11. Outside referrals.....			
12. Emergency room and out-of-area.....			
13. Prescription drugs.....		904,772,832	972,240,062
14. Aggregate write-ins for other hospital and medical.....	.0	.0	.0
15. Incentive pool, withhold adjustments and bonus amounts.....		41,931,719	63,875,457
16. Subtotal (Lines 9 to 15).....	.0	5,796,476,741	6,396,986,283
Less:			
17. Net reinsurance recoveries.....		2,909,605	1,234,786
18. Total hospital and medical (Lines 16 minus 17).....	.0	5,793,567,136	6,395,751,497
19. Non-health claims (net).....			
20. Claims adjustment expenses, including \$.....95,359,970 cost containment expenses.....		249,703,600	292,544,193
21. General administrative expenses.....		562,582,673	542,482,269
22. Increase in reserves for life and accident and health contracts including \$.....0 increase in reserves for life only).....		42,794,000	12,117,000
23. Total underwriting deductions (Lines 18 through 22).....	.0	6,648,647,409	7,242,894,959
24. Net underwriting gain or (loss) (Lines 8 minus 23).....	.XXX	(73,954,974)	(256,501,066)
25. Net investment income earned (Exhibit of Net Investment Income, Line 17).....		162,652,317	194,630,230
26. Net realized capital gains or (losses) less capital gains tax of \$....12,208,593.....		48,834,372	46,865,142
27. Net investment gains or (losses) (Lines 25 plus 26).....	.0	211,486,689	241,495,372
28. Net gain or (loss) from agents' or premium balances charged off [(amount recovered \$.....0) (amount charged off \$.....0)].....			
29. Aggregate write-ins for other income or expenses.....	.0	(23,437,699)	3,248,849
30. Net income or (loss) after capital gains tax and before all other federal income taxes (Lines 24 plus 27 plus 28 plus 29).....	.XXX	114,094,016	(11,756,845)
31. Federal and foreign income taxes incurred.....	.XXX	(91,135,847)	(24,336,120)
32. Net income (loss) (Lines 30 minus 31).....	.XXX	205,229,863	12,579,275

DETAILS OF WRITE-INS

0601. ....	.XXX		
0602. ....	.XXX		
0603. ....	.XXX		
0698. Summary of remaining write-ins for Line 6 from overflow page.....	.XXX	.0	.0
0699. Totals (Lines 0601 thru 0603 plus 0698) (Line 6 above).....	.XXX	.0	.0
0701. ....	.XXX		
0702. ....	.XXX		
0703. ....	.XXX		
0798. Summary of remaining write-ins for Line 7 from overflow page.....	.XXX	.0	.0
0799. Totals (Lines 0701 thru 0703 plus 0798) (Line 7 above).....	.XXX	.0	.0
1401.			
1402.			
1403.			
1498. Summary of remaining write-ins for Line 14 from overflow page.....	.0	.0	.0
1499. Totals (Lines 1401 thru 1403 plus 1498) (Line 14 above).....	.0	.0	.0
2901. Miscellaneous Income.....		(23,437,699)	3,248,849
2902.			
2903.			
2998. Summary of remaining write-ins for Line 29 from overflow page.....	.0	.0	.0
2999. Totals (Lines 2901 thru 2903 plus 2998) (Line 29 above).....	.0	(23,437,699)	3,248,849

STATEMENT OF REVENUE AND EXPENSES (Continued)

CAPITAL AND SURPLUS ACCOUNT	1 Current Year	2 Prior Year
33. Capital and surplus prior reporting period.....	2,562,230,008	2,227,406,513
34. Net income or (loss) from Line 32.....	205,229,863	12,579,275
35. Change in valuation basis of aggregate policy and claim reserves.....		
36. Change in net unrealized capital gains and (losses) less capital gains tax of \$.....0.....	124,884,968	322,206,647
37. Change in net unrealized foreign exchange capital gain or (loss).....		
38. Change in net deferred income tax.....	(106,250,325)	2,786,662
39. Change in nonadmitted assets.....	46,714,571	222,550,490
40. Change in unauthorized reinsurance.....		
41. Change in treasury stock.....		
42. Change in surplus notes.....		
43. Cumulative effect of changes in accounting principles.....		
44. Capital changes:		
44.1 Paid in.....		
44.2 Transferred from surplus (Stock Dividend).....		
44.3 Transferred to surplus.....		
45. Surplus adjustments:		
45.1 Paid in.....		
45.2 Transferred to capital (Stock Dividend).....		
45.3 Transferred from capital.....		
46. Dividends to stockholders.....		
47. Aggregate write-ins for gains or (losses) in surplus.....	(73,341,528)	(225,299,579)
48. Net change in capital and surplus (Lines 34 to 47).....	197,237,549	334,823,495
49. Capital and surplus end of reporting period (Line 33 plus 48).....	2,759,467,557	2,562,230,008

DETAILS OF WRITE-INS

4701. Additional Pension Liability.....	(73,341,528)	(272,511,841)
4702. Additional admitted DTA's due to SSAP 10 R.....		47,212,262
4703.		
4798. Summary of remaining write-ins for Line 47 from overflow page.....	0	0
4799. Totals (Lines 4701 thru 4703 plus 4798) (Line 47 above).....	(73,341,528)	(225,299,579)

CASH FLOW

	1 Current Year	2 Prior Year
CASH FROM OPERATIONS		
1. Premiums collected net of reinsurance.....	6,560,940,184	6,822,357,870
2. Net investment income.....	151,549,849	170,915,714
3. Miscellaneous income.....		
4. Total (Lines 1 through 3).....	6,712,490,033	6,993,273,584
5. Benefit and loss related payments.....	5,855,881,133	6,351,402,563
6. Net transfers to Separate Accounts, Segregated Accounts and Protected Cell Accounts.....		
7. Commissions, expenses paid and aggregate write-ins for deductions.....	606,704,840	769,962,841
8. Dividends paid to policyholders.....		
9. Federal and foreign income taxes paid (recovered) net of \$.....0 tax on capital gains (losses).....	81,966,161	(16,206,705)
10. Total (Lines 5 through 9).....	6,544,552,134	7,105,158,699
11. Net cash from operations (Line 4 minus Line 10).....	167,937,899	(111,885,115)
CASH FROM INVESTMENTS		
12. Proceeds from investments sold, matured or repaid:		
12.1 Bonds.....	3,713,668,408	2,902,909,477
12.2 Stocks.....	254,008,929	291,984,107
12.3 Mortgage loans.....		
12.4 Real estate.....		16,201,525
12.5 Other invested assets.....		
12.6 Net gains or (losses) on cash, cash equivalents and short-term investments.....	44,734	182,249
12.7 Miscellaneous proceeds.....	1,744,232	436,721
12.8 Total investment proceeds (Lines 12.1 to 12.7).....	3,969,466,303	3,211,714,079
13. Cost of investments acquired (long-term only):		
13.1 Bonds.....	3,713,348,621	3,052,484,213
13.2 Stocks.....	351,382,194	180,506,619
13.3 Mortgage loans.....		
13.4 Real estate.....	10,779,272	24,241,577
13.5 Other invested assets.....	6,423,122	33,786,242
13.6 Miscellaneous applications.....		
13.7 Total investments acquired (Lines 13.1 to 13.6).....	4,081,933,209	3,291,018,651
14. Net increase (decrease) in contract loans and premium notes.....		
15. Net cash from investments (Line 12.8 minus Lines 13.7 minus Line 14).....	(112,466,906)	(79,304,571)
CASH FROM FINANCING AND MISCELLANEOUS SOURCES		
16. Cash provided (applied):		
16.1 Surplus notes, capital notes.....		
16.2 Capital and paid in surplus, less treasury stock.....		
16.3 Borrowed funds.....	(14,575,657)	394,966,239
16.4 Net deposits on deposit-type contracts and other insurance liabilities.....		
16.5 Dividends to stockholders.....		
16.6 Other cash provided (applied).....	15,339,816	6,338,914
17. Net cash from financing and miscellaneous sources (Lines 16.1 to 16.4 minus Line 16.5 plus Line 16.6).....	764,159	401,305,153
RECONCILIATION OF CASH, CASH EQUIVALENTS AND SHORT-TERM INVESTMENTS		
18. Net change in cash, cash equivalents and short-term investments (Line 11 plus Line 15 plus Line 17).....	56,235,152	210,115,467
19. Cash, cash equivalents and short-term investments:		
19.1 Beginning of year.....	60,522,173	(149,593,294)
19.2 End of year (Line 18 plus Line 19.1).....	116,757,325	60,522,173
Note: Supplemental disclosures of cash flow information for non-cash transactions:		
20.0001		

Statement as of December 31, 2010 of the **BLUE CROSS BLUE SHIELD OF MICHIGAN**

ANALYSIS OF OPERATION BY LINES OF BUSINESS

	1	2	3	4	5	6	7	8	9	10
	Total	Comprehensive (Hospital and Medical)	Medicare Supplement	Dental Only	Vision Only	Federal Employees Health Benefit Plans	Title VIII Medicare	Title XIX Medicaid	Other Health	Other Non-Health
1. Net premium income.....	6,588,172,279	4,582,925,812	279,617,798	85,526,979	11,827,355	354,384,431	934,854,132	.....	308,835,772	.....
2. Change in unearned premium reserves and reserve for rate credit.....	16,520,156	9,423,972	(1,767,413)	1,828,602	6,851,968	(641,338)	824,365	.....	.....	.....
3. Fee-for-service (net of \$.00 medical expenses).....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
4. Risk revenue.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
5. Aggregate write-ins for other health care related revenues.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
6. Aggregate write-ins for other non-health care related revenues.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
7. Total revenues (Lines 1 to 6).....	6,574,692,435	4,592,349,784	277,850,385	87,355,581	18,679,323	353,943,093	935,678,497	.....	308,835,772	.....
8. Hospital/medical benefits.....	4,748,458,970	3,262,114,601	431,867,831	75,838,047	13,213,263	236,428,087	642,044,841	.....	176,001,610	.....
9. Other professional services.....	101,315,220	7,747,187	.....	.....	.....	2,452,163	2,064,560	.....	.....	.....
10. Outside referrals.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
11. Emergency room and out-of-area.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
12. Prescription drugs.....	904,772,832	686,330,519	.....	.....	.....	86,990,373	59,121,222	.....	70,330,718	.....
13. Aggregate write-ins for other hospital and medical.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
14. Incentive pool, withhold adjustments and bonus amounts.....	41,931,719	41,931,719	.....	.....	.....	.....	.....	.....	.....	.....
15. Subtotal (Lines 8 to 14).....	5,796,476,741	3,998,124,026	431,867,831	75,838,047	13,213,263	327,870,623	703,230,623	.....	246,332,328	.....
16. Net reinsurance recoveries.....	2,909,605	2,909,605	.....	.....	.....	.....	.....	.....	.....	.....
17. Total hospital and medical (Lines 15 minus 16).....	5,793,567,136	3,995,214,421	431,867,831	75,838,047	13,213,263	327,870,623	703,230,623	.....	246,332,328	.....
18. Non-health claims (net).....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
19. Claims adjustment expenses including \$.95,359,970 cost containment expenses.....	249,703,599	187,878,681	13,634,249	3,573,824	764,194	7,003,615	29,631,750	.....	7,217,286	.....
20. General administrative expenses.....	562,592,674	423,291,016	30,717,988	8,051,833	1,721,731	15,779,158	66,780,389	.....	16,260,559	.....
21. Increase in reserves for accident and health contracts.....	42,794,000	35,961,543	5,527,501	1,307,009	(2,663)	.....	.....	.....	.....	.....
22. Increase in reserve for life contracts.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
23. Total underwriting deductions (Lines 17 to 22).....	6,648,647,409	4,642,345,661	481,747,569	88,771,313	15,696,535	350,653,396	799,622,762	.....	269,810,173	.....
24. Net underwriting gain or (loss) (Line 7 minus Line 23).....	(73,954,974)	(49,995,877)	(203,897,184)	(1,415,732)	2,982,788	3,289,697	1,360,557,35	.....	39,025,599	.....

DETAILS OF WRITE-INS

0601. ....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
0602. ....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
0603. ....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
0598. Summary of remaining write-ins for Line 5 from overflow page.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
0599. Total (Lines 0501 thru 0503 plus 0598) (Line 5 above).....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
0601. ....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
0602. ....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
0603. ....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
0698. Summary of remaining write-ins for Line 6 from overflow page.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
0699. Total (Lines 0601 thru 0603 plus 0698) (Line 6 above).....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1301. ....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1302. ....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1303. ....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1398. Summary of remaining write-ins for Line 13 from overflow page.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1399. Total (Lines 1301 thru 1303 plus 1398) (Line 13 above).....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

BLUE CROSS BLUE SHIELD OF MICHIGAN
UNDERWRITING AND INVESTMENT EXHIBIT
PART 1 - PREMIUMS

Statement as of December 31, 2010 of the

Line of Business	1 Direct Business	2 Reinsurance Assumed	3 Reinsurance Ceded	4 Net Premium Income (Cols. 1 + 2 - 3)
1. Comprehensive (hospital and medical).....	4,585,800,641		2,874,829	4,582,925,812
2. Medicare supplement.....	279,617,798			279,617,798
3. Dental only.....	85,526,979			85,526,979
4. Vision only.....	11,827,355			11,827,355
5. Federal employees health benefits plan.....	354,584,431			354,584,431
6. Title XVIII - Medicare.....	934,854,132			934,854,132
7. Title XIX - Medicaid.....	308,835,772			308,835,772
8. Other health.....				0
9. Health subtotal (Lines 1 through 8).....	6,561,047,108	0	2,874,829	6,558,172,279
10. Life.....				0
11. Property/casualty.....				0
12. Totals (Lines 9 to 11).....	6,561,047,108	0	2,874,829	6,558,172,279

Statement as of December 31, 2010 of the **BLUE CROSS BLUE SHIELD OF MICHIGAN**

UNDERWRITING AND INVESTMENT EXHIBIT
PART 2 - CLAIMS INCURRED DURING THE YEAR

	1	2	3	4	5	6	7	8	9	10
	Total	Comprehensive (Hospital and Medical)	Medicare Supplement	Dental Only	Vision Only	Federal Employees Health Benefits Plan	Title XVIII Medicare	Title XIX Medicaid	Other Health	Other Non-Health
1. Payments during the year:										
1.1 Direct.....	5,814,996,617	3,960,752,971	427,847,384	74,718,634	13,036,226	342,193,354	749,685,838		246,762,210	
1.2 Reinsurance assumed.....	0	0	0	0	0	0	0	0	0	0
1.3 Reinsurance ceded.....	2,909,605	2,909,605	0	0	0	0	0	0	0	0
1.4 Net.....	5,812,087,012	3,957,843,366	427,847,384	74,718,634	13,036,226	342,193,354	749,685,838	0	246,762,210	0
2. Paid medical incentive pools and bonuses.....	37,471,211	37,471,211	0	0	0	0	0	0	0	0
3. Claim liability December 31, current year from Part 2A:										
3.1 Direct.....	607,109,810	381,941,782	64,720,306	4,265,630	739,193	25,335,851	108,054,224		22,052,824	
3.2 Reinsurance assumed.....	0	0	0	0	0	0	0	0	0	0
3.3 Reinsurance ceded.....	0	0	0	0	0	0	0	0	0	0
3.4 Net.....	607,109,810	381,941,782	64,720,306	4,265,630	739,193	25,335,851	108,054,224	0	22,052,824	0
4. Claim reserve December 31, current year from Part 2D:										
4.1 Direct.....	0	0	0	0	0	0	0	0	0	0
4.2 Reinsurance assumed.....	0	0	0	0	0	0	0	0	0	0
4.3 Reinsurance ceded.....	0	0	0	0	0	0	0	0	0	0
4.4 Net.....	0	0	0	0	0	0	0	0	0	0
5. Accrued medical incentive pools and bonuses, current year.....	25,463,440	25,463,440	0	0	0	0	0	0	0	0
6. Net healthcare receivables (a).....	12,354,739	12,354,739	0	0	0	0	0	0	0	0
7. Amounts recoverable from reinsurers December 31, current year.....	0	0	0	0	0	0	0	0	0	0
8. Claim liability December 31, prior year from Part 2A:										
8.1 Direct.....	655,206,667	374,147,709	60,699,859	3,146,217	562,157	39,658,581	154,509,438		22,482,706	
8.2 Reinsurance assumed.....	0	0	0	0	0	0	0	0	0	0
8.3 Reinsurance ceded.....	0	0	0	0	0	0	0	0	0	0
8.4 Net.....	655,206,667	374,147,709	60,699,859	3,146,217	562,157	39,658,581	154,509,438	0	22,482,706	0
9. Claim reserve December 31, prior year from Part 2D:										
9.1 Direct.....	0	0	0	0	0	0	0	0	0	0
9.2 Reinsurance assumed.....	0	0	0	0	0	0	0	0	0	0
9.3 Reinsurance ceded.....	0	0	0	0	0	0	0	0	0	0
9.4 Net.....	0	0	0	0	0	0	0	0	0	0
10. Accrued medical incentive pools and bonuses, prior year.....	21,002,932	21,002,932	0	0	0	0	0	0	0	0
11. Amounts recoverable from reinsurers December 31, prior year.....	0	0	0	0	0	0	0	0	0	0
12. Incurred benefits:										
12.1 Direct.....	5,754,545,021	3,956,192,305	431,867,831	75,838,047	13,213,262	327,870,624	703,230,624		246,332,328	
12.2 Reinsurance assumed.....	0	0	0	0	0	0	0	0	0	0
12.3 Reinsurance ceded.....	2,909,605	2,909,605	0	0	0	0	0	0	0	0
12.4 Net.....	5,751,635,416	3,953,282,700	431,867,831	75,838,047	13,213,262	327,870,624	703,230,624	0	246,332,328	0
13. Incurred medical incentive pools and bonuses.....	41,931,719	41,931,719	0	0	0	0	0	0	0	0

(a) Excludes \$.....0 loans or advances to providers not yet expensed.

Statement as of December 31, 2010 of the **BLUE CROSS BLUE SHIELD OF MICHIGAN**

UNDERWRITING AND INVESTMENT EXHIBIT
PART 2A - CLAIMS LIABILITY END OF CURRENT YEAR

	1	2	3	4	5	6	7	8	9	10
	Total	Comprehensive (Medical and Hospital)	Medicare Supplement	Dental Only	Vision Only	Federal Employees Health Benefits Plan	Title XVIII Medicare	Title XIX Medicaid	Other Health	Other Non-Health
1. Reported in process of adjustment:										
1.1 Direct.....	17,205,787	5,069,928	844,815	131,853	163	330,717	10,324,927		503,384	
1.2 Reinsurance assumed.....	0	0	0	0	0	0	0		0	
1.3 Reinsurance ceded.....	0	0	0	0	0	0	0		0	
1.4 Net.....	17,205,787	5,069,928	844,815	131,853	163	330,717	10,324,927	0	503,384	
2. Incurred but unreported:										
2.1 Direct.....	589,904,023	376,871,854	63,875,491	4,133,777	739,030	25,005,133	97,729,298		21,549,440	
2.2 Reinsurance assumed.....	0	0	0	0	0	0	0		0	
2.3 Reinsurance ceded.....	0	0	0	0	0	0	0		0	
2.4 Net.....	589,904,023	376,871,854	63,875,491	4,133,777	739,030	25,005,133	97,729,298	0	21,549,440	
3. Amounts withheld from paid claims and capitations:										
3.1 Direct.....	0	0	0	0	0	0	0		0	
3.2 Reinsurance assumed.....	0	0	0	0	0	0	0		0	
3.3 Reinsurance ceded.....	0	0	0	0	0	0	0		0	
3.4 Net.....	0	0	0	0	0	0	0	0	0	
4. Totals:										
4.1 Direct.....	607,109,810	381,941,782	64,720,306	4,265,630	739,193	25,335,850	108,054,225	0	22,052,824	
4.2 Reinsurance assumed.....	0	0	0	0	0	0	0	0	0	
4.3 Reinsurance ceded.....	0	0	0	0	0	0	0	0	0	
4.4 Net.....	607,109,810	381,941,782	64,720,306	4,265,630	739,193	25,335,850	108,054,225	0	22,052,824	

Statement as of December 31, 2010 of the **BLUE CROSS BLUE SHIELD OF MICHIGAN**

UNDERWRITING AND INVESTMENT EXHIBIT

PART 2B - ANALYSIS OF CLAIMS UNPAID - PRIOR YEAR - NET OF REINSURANCE

Line of Business	Claims Paid During the Year		Claim Reserve and Claim Liability December 31 of Current Year		5 Claims Incurred in Prior Years (Columns 1+3)	6 Estimated Claim Reserve and Claim Liability December 31 of Prior Year
	1 On Claims Incurred Prior to January 1 of Current Year	2 On Claims Incurred During the Year	3 On Claims Unpaid December 31 of Prior Year	4 On Claims Incurred During the Year		
1. Comprehensive (hospital and medical)	318,944,992	3,688,741,148	23,644,758	398,297,024	342,589,750	374,147,709
2. Medicare supplement	48,716,706	379,128,678	3,881,357	60,838,949	52,600,063	60,999,899
3. Dental only	4,289,931	70,428,703	252,326	4,013,304	4,542,257	3,146,216
4. Vision only	844,487	12,191,739	772	738,421	845,259	562,157
5. Federal employees health benefits plan	30,274,886	311,918,467	91,528	25,244,322	30,366,414	39,658,581
6. Title XVII - Medicare	112,551,116	637,134,722	12,330,801	36,723,623	124,881,717	154,509,438
7. Title XIX - Medicaid	14,097,493	232,664,717	542,015	21,510,809	0	22,482,706
8. Other health	529,721,611	5,332,208,174	40,743,357	566,366,452	570,464,988	655,206,686
9. Health subtotal (Lines 1 to 8)						
10. Healthcare receivables (a)		62,197,512			0	
11. Other non-health					0	
12. Medical incentive pools and bonus amounts	3,272,113	34,199,098	409,970	25,053,470	3,682,083	21,002,932
13. Totals (Lines 9 - 10 + 11 + 12)	532,993,724	5,304,209,760	41,153,327	591,419,922	574,147,051	676,209,598

(a) Excludes \$.....0 loans or advances to providers not yet expensed.

BLUE CROSS BLUE SHIELD OF MICHIGAN
UNDERWRITING AND INVESTMENT EXHIBIT
PART 2C - DEVELOPMENT OF PAID AND INCURRED CLAIMS
 (000 Omitted)

Statement as of December 31, 2010 of the

SECTION A - PAID HEALTH CLAIMS - GRAND TOTAL

Year in Which Losses Were Incurred	Cumulative Net Amounts Paid				
	1 2006	2 2007	3 2008	4 2009	5 2010
1. Prior		440,410	2,883	1,462	174
2. 2006		4,700,487	523,351	1,226	846
3. 2007	XXX	5,102,894	516,415	2,400	2,400
4. 2008	XXX	XXX	5,607,554	561,363	(5,798)
5. 2009	XXX	XXX	XXX	5,786,618	539,878
6. 2010	XXX	XXX	XXX	XXX	5,304,211

SECTION B - INCURRED HEALTH CLAIMS - GRAND TOTAL

Year in Which Losses Were Incurred	Sum of Cumulative Net Amount Paid and Claim Liability, Claim Reserve and Medical Incentive Pool and Bonuses Outstanding at End of Year				
	1 2006	2 2007	3 2008	4 2009	5 2010
1. Prior		460,628	23,877	1,531	199
2. 2006		4,744,598	494,329	27,178	2,898
3. 2007	XXX	5,177,181	473,088	27,623	1,171
4. 2008	XXX	XXX	5,606,089	513,376	(2,202)
5. 2009	XXX	XXX	XXX	581,656	15,150
6. 2010	XXX	XXX	XXX	XXX	499,444
					5,280,007

SECTION C - INCURRED YEAR HEALTH CLAIM AND CLAIM ADJUSTMENT EXPENSE RATIO - GRAND TOTAL

Years in Which Premiums were Earned and Claims were Incurred	1	2	3	4	5	6	7	8	9	10
	Premiums Earned	Claim Payments	Claim Adjustment Expense Payments	Percent (Col. 3/2)	Claim and Claim Adjustment Expense Payments (Col. 2 + 3)	Percent (Col. 5/1)	Claims Unpaid	Unpaid Claim Adjustment Expense	Total Claims and Claims Adjustment Expense Incurred (Col. 5 + 7 + 8)	Percent (Col. 9/1)
1. 2006	5,805,420	5,227,131	51	0.0	5,227,182	90.0			5,227,182	90.0
2. 2007	6,169,179	5,619,338	(93)	(0.0)	5,619,245	91.1	672	87	5,620,004	91.1
3. 2008	6,806,040	6,163,179	(255)	(0.0)	6,162,924	90.6	8,320	1,076	6,172,320	90.7
4. 2009	6,986,394	6,326,496	22,781	0.4	6,349,277	90.9	31,752	4,039	6,385,068	91.4
5. 2010	6,574,692	5,966,408	227,218	4.2	5,993,626	85.1	891,829	74,116	6,259,571	95.2

BLUE CROSS BLUE SHIELD OF MICHIGAN
UNDERWRITING AND INVESTMENT EXHIBIT
PART 2C - DEVELOPMENT OF PAID AND INCURRED CLAIMS
 (000 Omitted)

Statement as of December 31, 2010 of the

SECTION A - PAID HEALTH CLAIMS - HOSPITAL AND MEDICAL

Year in Which Losses Were Incurred	Cumulative Net Amounts Paid				
	1 2006	2 2007	3 2008	4 2009	5 2010
1. Prior					
2. 2006	359,806	1,335	1,157	127	445
3. 2007	3,750,008	371,750	(2,075)	593	369
4. 2008	XXX	3,832,620	335,330	906	(2,719)
5. 2009	XXX	XXX	3,924,903	335,350	324,121
6. 2010	XXX	XXX	XXX	3,921,109	3,660,743

SECTION B - INCURRED HEALTH CLAIMS - HOSPITAL AND MEDICAL

Year in Which Losses Were Incurred	Sum of Cumulative Net Amount Paid and Claim Liability, Claim Reserve and Medical Incentive Pool and Bonuses Outstanding at End of Year				
	1 2006	2 2007	3 2008	4 2009	5 2010
1. Prior					
2. 2006	360,535	1,501	1,167	114	399
3. 2007	3,742,790	335,692	(681)	554	541
4. 2008	XXX	3,857,460	304,939	1,565	95
5. 2009	XXX	XXX	3,928,923	304,614	295,111
6. 2010	XXX	XXX	XXX	3,975,682	3,699,069

SECTION C - INCURRED YEAR HEALTH CLAIM AND CLAIM ADJUSTMENT EXPENSE RATIO - HOSPITAL AND MEDICAL

Years in Which Premiums were Eamed and Claims were Incurred	1	2	3	4	5	6	7	8	9	10
	Premiums Earned	Claim Payments	Claim Adjustment Expense Payments	Percent (Col. 3/2)	Claim and Claim Adjustment Expense Payments (Col. 2 + 3)	Percent (Col. 5/1)	Claims Unpaid	Unpaid Claim Adjustment Expenses	Total Claims and Claims Adjustment Expense Incurred (Col. 5 + 7 + 8)	Percent (Col. 9/1)
1. 2006	4,789,834	4,120,721	21	0.0	4,120,742	86.0			4,120,742	86.0
2. 2007	4,791,046	4,169,225	17	0.0	4,169,242	87.0	649	84	4,169,975	87.0
3. 2008	4,930,917	4,257,534	(128)	(0.0)	4,257,406	86.3	7,809	1,010	4,266,225	86.5
4. 2009	4,809,234	4,245,230	15,289	0.4	4,260,519	88.6	15,188	1,965	4,277,672	88.9
5. 2010	4,592,350	3,729,940	172,680	4.6	3,895,620	84.8	383,760	49,659	4,329,039	94.3

BLUE CROSS BLUE SHIELD OF MICHIGAN
UNDERWRITING AND INVESTMENT EXHIBIT
PART 2C - DEVELOPMENT OF PAID AND INCURRED CLAIMS
 (000 Omitted)

Statement as of December 31, 2010 of the

SECTION A - PAID HEALTH CLAIMS - MEDICARE SUPPLEMENT

	Cumulative Net Amounts Paid					
	1 2006	2 2007	3 2008	4 2009	5 2010	
1. Prior	50,171	.201	.91	.9	.51	
2. 2006	323,387	53,283	689	73	201	
3. 2007	XXX	330,183	54,683	1,155	984	
4. 2008	XXX	XXX	338,940	54,112	47,483	
5. 2009	XXX	XXX	XXX	363,152	379,129	
6. 2010	XXX	XXX	XXX	XXX	XXX	

SECTION B - INCURRED HEALTH CLAIMS - MEDICARE SUPPLEMENT

	Sum of Cumulative Net Amount Paid and Claim Liability, Claim Reserve and Medical Incentive Pool and Bonuses Outstanding at End of Year				
	1 2006	2 2007	3 2008	4 2009	5 2010
1. Prior	45,238	194	88	.8	.45
2. 2006	333,402	46,989	704	73	185
3. 2007	XXX	334,072	49,478	1,108	1,028
4. 2008	XXX	XXX	349,467	48,598	43,025
5. 2009	XXX	XXX	XXX	364,395	387,588
6. 2010	XXX	XXX	XXX	XXX	XXX

SECTION C - INCURRED YEAR HEALTH CLAIM AND CLAIM ADJUSTMENT EXPENSE RATIO - MEDICARE SUPPLEMENT

Years in Which Premiums were Eamed and Claims were Incurred	1	2	3	4	5	6	7	8	9	10
	Premiums Earned	Claim Payments	Claim Adjustment Expense Payments	Percent (Col. 3/2)	Claim and Claim Adjustment Expense Payments (Col. 2 + 3)	Percent (Col. 5/1)	Claims Unpaid	Unpaid Claim Adjustment Expenses	Total Claims and Claims Adjustment Expense Incurred (Col. 5 + 7 + 8)	Percent (Col. 9/1)
1. 2006	221,430	377,483	.2	0.0	377,485	170.5			377,485	170.5
2. 2007	224,714	386,232	.6	0.0	386,238	171.9	.23	.3	386,264	171.9
3. 2008	255,536	394,036	.31	0.0	394,067	154.2	497	64	394,628	154.4
4. 2009	265,543	410,635	1,513	0.4	412,148	155.2	3,361	435	415,944	156.6
5. 2010	277,850	379,129	12,082	3.2	391,211	140.8	60,839	7,873	459,923	165.5

BLUE CROSS BLUE SHIELD OF MICHIGAN
UNDERWRITING AND INVESTMENT EXHIBIT
PART 2C - DEVELOPMENT OF PAID AND INCURRED CLAIMS
 (000 Omitted)

Statement as of December 31, 2010 of the

SECTION A - PAID HEALTH CLAIMS - DENTAL ONLY

Year in Which Losses Were Incurred	Cumulative Net Amounts Paid				
	1 2006	2 2007	3 2008	4 2009	5 2010
1. Prior	3,403	46	2		
2. 2006	63,714	3,086	65		
3. 2007	XXX	59,408	3,107		
4. 2008	XXX	XXX	67,500		
5. 2009	XXX	XXX	XXX	67,985	
6. 2010	XXX	XXX	XXX	XXX	70,429

SECTION B - INCURRED HEALTH CLAIMS - DENTAL ONLY

Year in Which Losses Were Incurred	Sum of Cumulative Net Amount Paid and Claim Liability, Claim Reserve and Medical Incentive Pool and Bonuses Outstanding at End of Year				
	1 2006	2 2007	3 2008	4 2009	5 2010
1. Prior	3,506	44	2		
2. 2006	63,886	2,952	56		
3. 2007	XXX	59,738	3,244		
4. 2008	XXX	XXX	66,957		
5. 2009	XXX	XXX	XXX	66,399	
6. 2010	XXX	XXX	XXX	XXX	71,997

SECTION C - INCURRED YEAR HEALTH CLAIM AND CLAIM ADJUSTMENT EXPENSE RATIO - DENTAL ONLY

Years in Which Premiums were Earned and Claims were Incurred	1 Premiums Earned	2 Claim Payments	3 Claim Adjustment Expense Payments	4 Percent (Col. 3/2)	5 Claim and Claim Adjustment Expense Payments (Col. 2 + 3)	6 Percent (Col. 5/1)	7 Claims Unpaid	8 Unpaid Claim Adjustment Expenses	9 Total Claims and Claims Adjustment Expense Incurred (Col. 5 + 7 + 8)	10 Percent (Col. 9/1)
1. 2006	78,449	66,860	0.0	85.2	66,860	85.2		66,860	85.2	
2. 2007	73,954	62,578	0.0	84.6	62,578	84.6		62,578	84.6	
3. 2008	82,779	71,441	0.0	86.3	71,444	86.3	1	71,445	86.3	
4. 2009	82,387	72,202	202	87.9	72,404	87.9	251	72,688	88.2	
5. 2010	87,356	70,429	3,369	80.4	73,798	84.5	4,013	78,330	89.7	

BLUE CROSS BLUE SHIELD OF MICHIGAN
UNDERWRITING AND INVESTMENT EXHIBIT
PART 2C - DEVELOPMENT OF PAID AND INCURRED CLAIMS
 (000 Omitted)

Statement as of December 31, 2010 of the

SECTION A - PAID HEALTH CLAIMS - VISION ONLY

Year in Which Losses Were Incurred	Cumulative Net Amounts Paid				
	1 2006	2 2007	3 2008	4 2009	5 2010
1. Prior	768	4			
2. 2006	11,573	688	2		
3. 2007	XXX	10,194	660	2	
4. 2008	XXX	XXX	12,719	753	4
5. 2009	XXX	XXX	XXX	12,380	840
6. 2010	XXX	XXX	XXX	XXX	12,192

SECTION B - INCURRED HEALTH CLAIMS - VISION ONLY

Year in Which Losses Were Incurred	Sum of Cumulative Net Amount Paid and Claim Liability, Claim Reserve and Medical Incentive Pool and Bonuses Outstanding at End of Year				
	1 2006	2 2007	3 2008	4 2009	5 2010
1. Prior	641	8			
2. 2006	11,627	515	11		
3. 2007	XXX	10,421	620	10	
4. 2008	XXX	XXX	12,795	620	10
5. 2009	XXX	XXX	XXX	12,283	698
6. 2010	XXX	XXX	XXX	XXX	12,544

SECTION C - INCURRED YEAR HEALTH CLAIM AND CLAIM ADJUSTMENT EXPENSE RATIO - VISION ONLY

Years in Which Premiums were Eamed and Claims were Incurred	1 Premiums Earned	2 Claim Payments	3 Claim Adjustment Expense Payments	4 Percent (Col. 3/2)	5 Claim and Claim Adjustment Expense Payments (Col. 2 + 3)	6 Percent (Col. 5/1)	7 Claims Unpaid	8 Unpaid Claim Adjustment Expenses	9 Total Claims and Claims Adjustment Expense Incurred (Col. 5 + 7 + 8)	10 Percent (Col. 9/1)
1. 2006	15,403	12,273	0.0	79.7	12,273	79.7		12,273	79.7	
2. 2007	13,844	10,856	0.0	78.4	10,856	78.4		10,856	78.4	
3. 2008	17,485	13,476	0.0	77.1	13,476	77.1		13,476	77.1	
4. 2009	18,278	13,220	0.4	72.6	13,289	72.6	1	13,270	72.6	
5. 2010	18,679	12,192	5.9	69.1	12,907	69.1	96	13,741	73.6	

Statement as of December 31, 2010 of the **BLUE CROSS BLUE SHIELD OF MICHIGAN**
UNDERWRITING AND INVESTMENT EXHIBIT
PART 2C - DEVELOPMENT OF PAID AND INCURRED CLAIMS
 (000 Omitted)

SECTION A - PAID HEALTH CLAIMS - FEDERAL EMPLOYEES HEALTH BENEFITS PLAN PREMIUM

Year in Which Losses Were Incurred	Cumulative Net Amounts Paid				
	1 2006	2 2007	3 2008	4 2009	5 2010
1. Prior	25,729	761	212	39	
2. 2006	XXX	25,188	626	133	17
3. 2007	XXX	257,922	30,134	1,186	(37)
4. 2008	XXX	XXX	272,338	34,422	(34)
5. 2009	XXX	XXX	XXX	284,287	30,328
6. 2010	XXX	XXX	XXX	XXX	311,918

SECTION B - INCURRED HEALTH CLAIMS - FEDERAL EMPLOYEES HEALTH BENEFITS PLAN PREMIUM

Year in Which Losses Were Incurred	Sum of Cumulative Net Amount Paid and Claim Liability, Claim Reserve and Medical Incentive Pool and Bonuses Outstanding at End of Year				
	1 2006	2 2007	3 2008	4 2009	5 2010
1. Prior	45,601	21,639	243	41	
2. 2006	203,087	28,882	25,189	171	20
3. 2007	XXX	237,466	34,398	25,684	(41)
4. 2008	XXX	XXX	246,952	37,723	17,938
5. 2009	XXX	XXX	XXX	259,196	33,991
6. 2010	XXX	XXX	XXX	XXX	275,965

SECTION C - INCURRED YEAR HEALTH CLAIM AND CLAIM ADJUSTMENT EXPENSE RATIO - FEDERAL EMPLOYEES HEALTH BENEFITS PLAN PREMIUM

Years in Which Premiums were Eamed and Claims were Incurred	1	2	3	4	5	6	7	8	9	10
	Premiums Earned	Claim Payments	Claim Adjustment Expense Payments	Percent (Col. 3/2)	Claim and Claim Adjustment Expense Payments (Col. 2 + 3)	Percent (Col. 5/1)	Claims Unpaid	Unpaid Claim Adjustment Expenses	Total Claims and Claims Adjustment Expense Incurred (Col. 5 + 7 + 8)	Percent (Col. 9/1)
1. 2006	270,742	246,742	0.0	246,742	91.1				246,742	91.1
2. 2007	314,059	289,205	(1)	289,204	92.1				289,204	92.1
3. 2008	330,689	306,726	(1)	306,725	92.8	13			306,740	92.8
4. 2009	348,123	314,625	621	315,246	90.6	78		10	315,334	90.6
5. 2010	353,943	311,918	6,384	318,302	89.9	25,244		3,267	346,813	98.0

BLUE CROSS BLUE SHIELD OF MICHIGAN
UNDERWRITING AND INVESTMENT EXHIBIT
PART 2C - DEVELOPMENT OF PAID AND INCURRED CLAIMS
 (000 Omitted)

Statement as of December 31, 2010 of the

SECTION A - PAID HEALTH CLAIMS - TITLE XVIII - MEDICARE

Year in Which Losses Were Incurred	Cumulative Net Amounts Paid				
	1 2006	2 2007	3 2008	4 2009	5 2010
1. Prior		536			
2. 2006	168,721	44,436	1,929	45	705
3. 2007	XXX	435,359	74,119	(910)	(2,506)
4. 2008	XXX	XXX	776,585	102,642	(4,040)
5. 2009	XXX	XXX	XXX	833,720	118,792
6. 2010	XXX	XXX	XXX	XXX	637,135

SECTION B - INCURRED HEALTH CLAIMS - TITLE XVIII - MEDICARE

Year in Which Losses Were Incurred	Sum of Cumulative Net Amount Paid and Claim Liability, Claim Reserve and Medical Incentive Pool and Bonuses Outstanding at End of Year				
	1 2006	2 2007	3 2008	4 2009	5 2010
1. Prior		491			
2. 2006	220,336	41,128	1,899	38	704
3. 2007	XXX	433,845	60,954	(788)	(2,888)
4. 2008	XXX	XXX	811,069	88,059	(3,977)
5. 2009	XXX	XXX	XXX	966,519	108,242
6. 2010	XXX	XXX	XXX	XXX	601,151

SECTION C - INCURRED YEAR HEALTH CLAIM AND CLAIM ADJUSTMENT EXPENSE RATIO - TITLE XVIII - MEDICARE

Years in Which Premiums were Eamed and Claims were Incurred	1	2	3	4	5	6	7	8	9	10
	Premiums Earned	Claim Payments	Claim Adjustment Expense Payments	Percent (Col. 3/2)	Claim and Claim Adjustment Expense Payments (Col. 2 + 3)	Percent (Col. 5/1)	Claims Unpaid	Unpaid Claim Adjustment Expenses	Total Claims and Claims Adjustment Expense Incurred (Col. 5 + 7 + 8)	Percent (Col. 9/1)
1. 2006	227,684	215,836	28	0.0	215,864	94.8			215,864	94.8
2. 2007	532,024	505,662	(115)	(0.0)	505,547	95.0			505,547	95.0
3. 2008	941,815	875,187	(160)	(0.0)	875,027	92.9			875,027	92.9
4. 2009	1,182,572	1,052,512	4,686	0.4	1,057,207	89.4	12,331	1,596	1,071,134	90.6
5. 2010	935,678	637,135	25,183	4.0	662,318	70.8	95,724	12,387	770,429	82.3

BLUE CROSS BLUE SHIELD OF MICHIGAN
UNDERWRITING AND INVESTMENT EXHIBIT
PART 2C - DEVELOPMENT OF PAID AND INCURRED CLAIMS
 (000 Omitted)

SECTION A - PAID HEALTH CLAIMS - TITLE XIX - MEDICAID

Year in Which Losses Were Incurred	Cumulative Net Amounts Paid				
	1 2006	2 2007	3 2008	4 2009	5 2010
1. Prior	NONE				
2. 2006					
3. 2007	XXX				
4. 2008	XXX	XXX			
5. 2009	XXX	XXX	XXX		
6. 2010	XXX	XXX	XXX	XXX	

SECTION B - INCURRED HEALTH CLAIMS - TITLE XIX - MEDICAID

Year in Which Losses Were Incurred	Sum of Cumulative Net Amount Paid and Claim Liability, Claim Reserve and Medical Incentive Pool and Bonuses Outstanding at End of Year				
	1 2006	2 2007	3 2008	4 2009	5 2010
1. Prior	NONE				
2. 2006					
3. 2007	XXX				
4. 2008	XXX	XXX			
5. 2009	XXX	XXX	XXX		
6. 2010	XXX	XXX	XXX	XXX	

SECTION C - INCURRED YEAR HEALTH CLAIM AND CLAIM ADJUSTMENT EXPENSE RATIO - TITLE XIX - MEDICAID

Years in Which Premiums were Eamed and Claims were Incurred	1	2	3	4	5	6	7	8	9	10
	Premiums Eamed	Claim Payments	Claim Adjustment Expense Payments	Percent (Col. 3/2)	Claim and Claim Adjustment Expense Payments (Col. 2+3)	Percent (Col. 5/1)	Claims Unpaid	Unpaid Claim Adjustment Expenses	Total Claims and Claims Adjustment Expense Incurred (Col. 5 + 7 + 8)	Percent (Col. 9/1)
1. 2006				NONE		.00				.00
2. 2007				.00		.00				.00
3. 2008				.00		.00				.00
4. 2009				.00		.00				.00
5. 2010				.00		.00				.00

BLUE CROSS BLUE SHIELD OF MICHIGAN
UNDERWRITING AND INVESTMENT EXHIBIT
PART 2C - DEVELOPMENT OF PAID AND INCURRED CLAIMS
 (000 Omitted)

SECTION A - PAID HEALTH CLAIMS - OTHER

	Cumulative Net Amounts Paid				
	1 2006	2 2007	3 2008	4 2009	5 2010
1. Prior	543				
2. 2006	162,307	24,899			
3. 2007	XXX	177,198	18,382		
4. 2008	XXX	XXX	214,589	30,210	
5. 2009	XXX	XXX	XXX	203,975	14,097
6. 2010	XXX	XXX	XXX	XXX	232,665

SECTION B - INCURRED HEALTH CLAIMS - OTHER

	Sum of Cumulative Net Amount Paid and Claim Liability, Claim Reserve and Medical Incentive Pool and Bonuses Outstanding at End of Year				
	1 2006	2 2007	3 2008	4 2009	5 2010
1. Prior	5,107				
2. 2006	169,520	28,171			
3. 2007	XXX	184,179	19,635		
4. 2008	XXX	XXX	190,926	30,314	
5. 2009	XXX	XXX	XXX	205,172	14,640
6. 2010	XXX	XXX	XXX	XXX	231,693

SECTION C - INCURRED YEAR HEALTH CLAIM AND CLAIM ADJUSTMENT EXPENSE RATIO - OTHER

Years in Which Premiums were Eamed and Claims were Incurred	1 Premiums Earned	2 Claim Payments	3 Claim Adjustment Expense Payments	4 Percent (Col. 3/2)	5 Claim and Claim Adjustment Expense Payments (Col. 2 + 3)	6 Percent (Col. 5/1)	7 Claims Unpaid	8 Unpaid Claim Adjustment Expenses	9 Total Claims and Claims Adjustment Expense Incurred (Col. 5 + 7 + 8)	10 Percent (Col. 9/1)
2. 2007	219,538	195,580	0.0	195,580	89.1			195,580	89.1	
3. 2008	246,819	244,779	0.0	244,779	99.2			244,779	99.2	
4. 2009	280,257	218,072	0.2	218,484	78.0	542		219,026	78.2	
5. 2010	308,836	232,665	2.9	239,470	77.5	21,511	315	261,286	84.6	

Statement as of December 31, 2010 of the **BLUE CROSS BLUE SHIELD OF MICHIGAN**

UNDERWRITING AND INVESTMENT EXHIBIT
PART 2D - AGGREGATE RESERVE FOR ACCIDENT AND HEALTH CONTRACTS ONLY

	1	2	3	4	5	6	7	8	9
	Total	Comprehensive (Hospital and Medical)	Medicare Supplement	Dental Only	Vision Only	Federal Employees Health Benefit Plan	Title XVIII Medicare	Title XIX Medicaid	Other
POLICY RESERVE									
1. Unearned premium reserves.....	211,215,328	173,807,548	27,738,293	2,145,993	315,223	211,803	6,996,488		
2. Additional policy reserves (a).....	402,347,068	128,582,936	270,721,501	3,042,593	38				
3. Reserve for future contingent benefits.....	0	0	0	0	0	0	0	0	0
4. Reserve for rate credits or experience rating refunds (including \$.....0) for investment income.....	266,708,275	253,408,527	0	3,489,405	632,780	7,599,128	1,579,435		
5. Aggregate write-ins for other policy reserves.....	0	0	0	0	0	0	0	0	0
6. Totals (gross).....	880,270,671	555,799,011	298,459,794	8,676,991	948,041	7,810,931	8,575,903		
7. Reinsurance ceded.....	0	0	0	0	0	0	0		
8. Totals (net) (Page 3, Line 4).....	880,270,671	555,799,011	298,459,794	8,676,991	948,041	7,810,931	8,575,903		
CLAIM RESERVE									
9. Present value of amounts not yet due on claims.....	0	0	0	0	0	0	0		
10. Reserve for future contingent benefits.....	0	0	0	0	0	0	0		
11. Aggregate write-ins for other claim reserves.....	0	0	0	0	0	0	0		
12. Totals (gross).....	0	0	0	0	0	0	0		
13. Reinsurance ceded.....	0	0	0	0	0	0	0		
14. Totals (net) (Page 3, Line 7).....	0	0	0	0	0	0	0		
DETAILS OF WRITE-INS									
0501.	0	0	0	0	0	0	0		
0502.	0	0	0	0	0	0	0		
0503.	0	0	0	0	0	0	0		
0598. Summary of remaining write-ins for Line 5 from overflow page.....	0	0	0	0	0	0	0		
0599. Totals (Lines 0501 thru 0503 plus 0598) (Line 5 above).....	0	0	0	0	0	0	0		
1101.	0	0	0	0	0	0	0		
1102.	0	0	0	0	0	0	0		
1103.	0	0	0	0	0	0	0		
1198. Summary of remaining write-ins for Line 11 from overflow page.....	0	0	0	0	0	0	0		
1199. Totals (Lines 1101 thru 1103 plus 1198) (Line 11 above).....	0	0	0	0	0	0	0		

(e) Includes \$.....402,347,068 premium deficiency reserve.

BLUE CROSS BLUE SHIELD OF MICHIGAN
UNDERWRITING AND INVESTMENT EXHIBIT

PART 3 - ANALYSIS OF EXPENSES

	Claim Adjustment Expenses		3 General Administrative Expenses	4 Investment Expenses	5 Total
	1 Cost Containment Expenses	2 Other Claim Adjustment Expenses			
1. Rent (\$.....41,291,439 for occupancy of own building).....	4,721,421	11,300,360	30,347,210	68,941	46,437,932
2. Salaries, wages and other benefits.....	92,470,869	148,180,567	318,979,158	618,711	560,249,305
3. Commissions (less \$.....0 ceded plus \$.....0 assumed).....			191,853,686		191,853,686
4. Legal fees and expenses.....			34,065,320		34,065,320
5. Certifications and accreditation fees.....	5,739				5,739
6. Auditing, actuarial and other consulting services.....	5,464,713	450,793	83,871,587	330,221	90,117,314
7. Traveling expenses.....	1,415,891	1,011,688	9,374,998	6,854	11,809,431
8. Marketing and advertising.....	3,094		12,730,173		12,733,267
9. Postage, express and telephone.....	1,860,889	11,481,868	9,028,563	2,357	22,373,677
10. Printing and office supplies.....	474,251	709,365	3,870,867	119,313	5,173,796
11. Occupancy, depreciation and amortization.....	1,058,823	2,476,988	4,846,156	76,940	8,458,907
12. Equipment.....					0
13. Cost or depreciation of EDP equipment and software.....	8,904,142	6,066,684	84,344,065	22,873	99,337,764
14. Outsourced services including EDP, claims, and other services.....	38,173,525	125,494,223	140,748,259	74,520	304,490,527
15. Boards, bureaus and association fees.....	453,311	10,713	8,241,343	25,585	8,730,952
16. Insurance, except on real estate.....	1,981	591	2,728,631	11,051	2,742,254
17. Collection and bank service charges.....				474	474
18. Group service and administration fees.....	13,082,883	10,158,234	70,637,482		93,878,599
19. Reimbursements by uninsured plans.....	(78,348,516)	(171,818,922)	(463,398,816)		(713,566,254)
20. Reimbursements from fiscal intermediaries.....					0
21. Real estate expenses.....					0
22. Real estate taxes.....					0
23. Taxes, licenses and fees:					
23.1 State and local insurance taxes.....					0
23.2 State premium taxes.....					0
23.3 Regulatory authority licenses and fees.....			1,576,290		1,576,290
23.4 Payroll taxes.....	5,616,954	8,820,478	18,737,701	43,246	33,218,379
23.5 Other (excluding federal income and real estate taxes).....					0
24. Investment expenses not included elsewhere.....					0
25. Aggregate write-ins for expenses.....	0	0	0	0	0
26. Total expenses incurred (Lines 1 to 25).....	95,359,970	154,343,630	562,582,673	1,401,086	(a) 813,687,359
27. Less expenses unpaid December 31, current year.....		79,317,143	160,183,348		239,500,491
28. Add expenses unpaid December 31, prior year.....		72,535,603	176,161,677		248,697,280
29. Amounts receivable relating to uninsured plans, prior year.....		112,038,754	208,291,627		320,330,381
30. Amounts receivable relating to uninsured plans, current year.....		34,351,557	77,542,764		111,894,321
31. Total expenses paid (Lines 26 minus 27 plus 28 minus 29 plus 30).....	95,359,970	69,874,893	447,812,139	1,401,086	614,448,088

DETAILS OF WRITE-INS

2501.					0
2502.					0
2503.					0
2598. Summary of remaining write-ins for Line 25 from overflow page.....	0	0	0	0	0
2599. TOTALS (Lines 2501 thru 2503 plus 2598) (Line 25 above).....	0	0	0	0	0

(a) Includes management fees of \$.....390,531 to affiliates and \$.....158,804,691 to non-affiliates.

EXHIBIT OF NET INVESTMENT INCOME

	1 Collected During Year	2 Earned During Year
1. U.S. government bonds.....	(a).....13,369,171	.....15,171,711
1.1 Bonds exempt from U.S. tax.....	(a).....	.....
1.2 Other bonds (unaffiliated).....	(a).....113,137,080	.....112,909,643
1.3 Bonds of affiliates.....	(a).....	.....
2.1 Preferred stocks (unaffiliated).....	(b).....87,826	.....80,757
2.11 Preferred stocks of affiliates.....	(b).....	.....
2.2 Common stocks (unaffiliated).....	.....58	.....8,144,937
2.21 Common stocks of affiliates.....	.....	.....
3. Mortgage loans.....	(c).....	.....
4. Real estate.....	(d).....	.....
5. Contract loans.....	.....	.....
6. Cash, cash equivalents and short-term investments.....	(e).....1,270,906	.....1,364,033
7. Derivative instruments.....	(f).....	.....
8. Other invested assets.....	.....	.....
9. Aggregate write-ins for investment income.....	(2,091,124)	39,217,183
10. Total gross investment income.....	125,773,917	176,888,264
11. Investment expenses.....		(g).....1,401,086
12. Investment taxes, licenses and fees, excluding federal income taxes.....		(g).....
13. Interest expense.....		(h).....
14. Depreciation on real estate and other invested assets.....		(i).....12,834,863
15. Aggregate write-ins for deductions from investment income.....		.....0
16. Total deductions (Lines 11 through 15).....		14,235,949
17. Net investment income (Line 10 minus Line 16).....		162,652,315

DETAILS OF WRITE-INS

0901. SECURITY LENDING INCOME.....	631,160	648,028
0902. MANAGEMENT FEES.....	(2,736,213)	(2,736,213)
0903. SWEEP INCOME.....	13,929	13,929
0998. Summary of remaining write-ins for Line 9 from overflow page.....	0	41,291,439
0999. Totals (Lines 0901 thru 0903 plus 0998) (Line 9 above).....	(2,091,124)	39,217,183
1501.		
1502.		
1503.		
1598. Summary of remaining write-ins for Line 15 from overflow page.....		0
1599. Totals (Lines 1501 thru 1503 plus 1598) (Line 15 above).....		0

- (a) Includes \$.....6,305,480 accrual of discount less \$.....26,421,960 amortization of premium and less \$.....15,751,776 paid for accrued interest on purchases.
- (b) Includes \$.....0 accrual of discount less \$.....0 amortization of premium and less \$.....0 paid for accrued dividends on purchases.
- (c) Includes \$.....0 accrual of discount less \$.....0 amortization of premium and less \$.....0 paid for accrued interest on purchases.
- (d) Includes \$.....0 for company's occupancy of its own buildings; and excludes \$.....0 interest on encumbrances.
- (e) Includes \$.....0 accrual of discount less \$.....0 amortization of premium and less \$.....0 paid for accrued interest on purchases.
- (f) Includes \$.....0 accrual of discount less \$.....0 amortization of premium.
- (g) Includes \$.....0 investment expenses and \$.....0 investment taxes, licenses and fees, excluding federal income taxes, attributable to Segregated and Separate Accounts.
- (h) Includes \$.....0 interest on surplus notes and \$.....0 interest on capital notes.
- (i) Includes \$.....12,834,863 depreciation on real estate and \$.....0 depreciation on other invested assets.

EXHIBIT OF CAPITAL GAINS (LOSSES)

	1 Realized Gain (Loss) on Sales or Maturity	2 Other Realized Adjustments	3 Total Realized Capital Gain (Loss) (Columns 1 + 2)	4 Change in Unrealized Capital Gain (Loss)	5 Change in Unrealized Foreign Exchange Capital Gain (Loss)
1. U.S. government bonds.....	(10,897,832)	.....	(10,897,832)	.....	.....
1.1 Bonds exempt from U.S. tax.....	.....	.....	0	.....	.....
1.2 Other bonds (unaffiliated).....	99,324,295	(8,890,895)	90,433,400	2,105,836	.....
1.3 Bonds of affiliates.....	.....	.....	0	.....	.....
2.1 Preferred stocks (unaffiliated).....	(5,646)	.....	(5,646)	.....	.....
2.11 Preferred stocks of affiliates.....	.....	.....	0	.....	.....
2.2 Common stocks (unaffiliated).....	19,958,334	(7,419,937)	12,538,397	61,550,428	.....
2.21 Common stocks of affiliates.....	.....	.....	0	65,855,000	.....
3. Mortgage loans.....	.....	.....	0	.....	.....
4. Real estate.....	.....	(32,003,687)	(32,003,687)	.....	.....
5. Contract loans.....	.....	.....	0	.....	.....
6. Cash, cash equivalents and short-term investments.....	44,734	(3,323)	41,411	.....	.....
7. Derivative instruments.....	.....	.....	0	.....	.....
8. Other invested assets.....	.....	(288,066)	(288,066)	(4,626,296)	.....
9. Aggregate write-ins for capital gains (losses).....	1,224,996	0	1,224,996	0	0
10. Total capital gains (losses).....	109,648,881	(48,605,908)	61,042,973	124,884,968	0

DETAILS OF WRITE-INS

0901. Others.....	1,224,996	.....	1,224,996	.....	.....
0902. ....	.....	.....	0	.....	.....
0903. ....	.....	.....	0	.....	.....
0998. Summary of remaining write-ins for Line 9 from overflow page..	0	0	0	0	0
0999. Totals (Lines 0901 thru 0903 plus 0998) (Line 9 above).....	1,224,996	0	1,224,996	0	0

EXHIBIT OF NONADMITTED ASSETS

	1 Current Year Total Nonadmitted Assets	2 Prior Year Total Nonadmitted Assets	3 Change in Total Nonadmitted Assets (Col. 2 - Col. 1)
1. Bonds (Schedule D).....			.0
2. Stocks (Schedule D):			
2.1 Preferred stocks.....			.0
2.2 Common stocks.....			.0
3. Mortgage loans on real estate (Schedule B):			
3.1 First liens.....			.0
3.2 Other than first liens.....			.0
4. Real estate (Schedule A):			
4.1 Properties occupied by the company.....			.0
4.2 Properties held for the production of income.....			.0
4.3 Properties held for sale.....			.0
5. Cash (Schedule E-Part 1), cash equivalents (Schedule E-Part 2) and short-term investments (Schedule DA).....			.0
6. Contract loans.....			.0
7. Derivatives.....			.0
8. Other invested assets (Schedule BA).....			.0
9. Receivables for securities.....			.0
10. Securities lending reinvested collateral assets.....			.0
11. Aggregate write-ins for invested assets.....	.0	.0	.0
12. Subtotals, cash and invested assets (Lines 1 to 11).....	.0	.0	.0
13. Title plants (for Title insurers only).....			.0
14. Investment income due and accrued.....			.0
15. Premiums and considerations:			
15.1 Uncollected premiums and agents' balances in the course of collection.....			.0
15.2 Deferred premiums, agents' balances and installments booked but deferred and not yet due.....			.0
15.3 Accrued retrospective premiums.....			.0
16. Reinsurance:			
16.1 Amounts recoverable from reinsurers.....			.0
16.2 Funds held by or deposited with reinsured companies.....			.0
16.3 Other amounts receivable under reinsurance contracts.....			.0
17. Amounts receivable relating to uninsured plans.....	30,288,499	27,244,045	(3,044,454)
18.1 Current federal and foreign income tax recoverable and interest thereon.....			.0
18.2 Net deferred tax asset.....		44,761,841	44,761,841
19. Guaranty funds receivable or on deposit.....			.0
20. Electronic data processing equipment and software.....	100,182,419	100,284,046	101,627
21. Furniture and equipment, including health care delivery assets.....	2,612,170	2,075,636	(536,534)
22. Net adjustment in assets and liabilities due to foreign exchange rates.....			.0
23. Receivables from parent, subsidiaries and affiliates.....			.0
24. Health care and other amounts receivable.....	2,334,869	2,187,618	(147,251)
25. Aggregate write-ins for other than invested assets.....	20,239,176	25,818,518	5,579,342
26. Total assets excluding Separate Accounts, Segregated Accounts and Protected Cell Accounts (Lines 12 through 25).....	155,657,133	202,371,704	46,714,571
27. From Separate Accounts, Segregated Accounts and Protected Cell Accounts.....			.0
28. TOTALS (Lines 26 and 27).....	155,657,133	202,371,704	46,714,571

DETAILS OF WRITE-INS

1101. ....			.0
1102. ....			.0
1103. ....			.0
1198. Summary of remaining write-ins for Line 11 from overflow page.....	.0	.0	.0
1199. Totals (Lines 1101 thru 1103 plus 1198) (Line 11 above).....	.0	.0	.0
2501. Miscellaneous Accounts Receivable.....	8,911,794	7,299,358	(1,612,436)
2502. Prepaid and Other Assets.....	5,660,295	3,877,661	(1,782,634)
2503. Company Owned Automobile.....	106,225	248,556	142,331
2598. Summary of remaining write-ins for Line 25 from overflow page.....	5,560,862	14,392,943	8,832,081
2599. Totals (Lines 2501 thru 2503 plus 2598) (Line 25 above).....	20,239,176	25,818,518	5,579,342

Statement as of December 31, 2010 of the **BLUE CROSS BLUE SHIELD OF MICHIGAN**
EXHIBIT 1 - ENROLLMENT BY PRODUCT TYPE FOR HEALTH BUSINESS ONLY

Source of Enrollment	Total Members at End of					
	1 Prior Year	2 First Quarter	3 Second Quarter	4 Third Quarter	5 Current Year	6 Current Year Member Months
1. Health maintenance organizations.....						
2. Provider service organizations.....						
3. Preferred provider organizations.....	1,233,624	1,215,314	1,205,439	1,190,539	1,182,701	14,434,401
4. Point of service.....	9,372	29	33	32	56	426
5. Indemnity only.....	423,427	368,108	362,454	353,330	347,076	4,314,071
6. Aggregate write-ins for other lines of business.....	756	736	742	724	724	8,836
7. Total.....	1,667,179	1,584,187	1,568,668	1,544,625	1,530,557	18,757,734

DETAILS OF WRITE-INS

0601. National Stoploss.....	109	100	103	98	101	1,211
0602. Local Stoploss.....	647	636	639	626	623	7,625
0603.						
0699. Summary of remaining write-ins for Line 6 from overflow page.....	0	0	0	0	0	0
0699. Totals (Lines 0601 thru 0603 plus 0698) (Line 6 above).....	756	736	742	724	724	8,836

**NOTES TO STATUTORY BASIS FINANCIAL STATEMENTS
FOR PERIOD ENDED DECEMBER 31, 2010**

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. Accounting Practices

Blue Cross Blue Shield of Michigan (the "Company") is incorporated as a nonprofit health care corporation under the provisions of Public Act 350 of 1980 ("P.A. 350") of the state of Michigan. Hospital, medical, and other health benefits are provided under contracts with subscribers. The Company also operates health maintenance organization ("HMO") subsidiaries that provide health care services to subscribers and contracts with various physician groups, hospitals, and other health care providers to provide such services. In addition, the Company operates subsidiaries that provide workers' compensation and long-term care insurance.

Michigan Office of Financial and Insurance Regulation ("OFIR") recognizes only statutory basis accounting practices prescribed or permitted by the state of Michigan for determining and reporting the financial condition and results of operations of an insurance company. OFIR adopted the National Association of Insurance Commissioners' *Accounting Practices and Procedures Manual* ("NAIC SAP") as the basis for its statutory accounting practices. The Commissioner of OFIR has the right to permit other specific practices that may deviate from the prescribed practices. The accompanying statutory basis financial statements have been prepared, except as to form, in conformity with accounting practices prescribed or permitted by OFIR.

At the direction of the Michigan Commissioner of Insurance, the Company limited its provision for all premium deficiency reserve (PDR) losses not to exceed two years. NAIC SAP, as prescribed in SSAP No. 54, *Individual and Group Accident and Health Contracts*, requires all reasonable foreseen losses be accrued. If the provision for PDR losses was not limited to a two years, statutory surplus would be decreased by \$214,584,000 and \$248,500,000 at December 31, 2010 and 2009, respectively. Additionally, net income would be increased (decreased) by \$33,848,000 and (\$51,906,000), respectively for the years then ended.

In 2009, OFIR approved the Company's permitted practice request regarding the determination of the admitted asset attributable to hospital advances pursuant to paragraph 16 of SSAP No. 84, *Certain Health Care Receivables and Receivables Under Government Insured Plans*. The permitted practice allows the Company to admit net hospital advances attributable to self-funded contract claims to the extent of the unpaid hospital incurred claims owed by the Company to the hospital. Without the permitted practice, statutory surplus would have decreased by \$45,989,000 and \$64,700,000 as of December 31, 2010 and 2009, respectively. The permitted practice had no impact on net income for the years ended December 31, 2010 and 2009.

A reconciliation of the Company's net income and capital and surplus between OFIR permitted and prescribed practices and NAIC SAP as of December 31, 2010 and 2009 is as follows:

	2010	2009
Net Income - MI OFIR	\$ 205,229,863	\$ 12,579,275
<i>MI OFIR Prescribed Practice</i>		
Two-Year Limitation on Premium Deficiency Reserves	33,848,000	(51,906,000)
<i>MI OFIR Permitted Practice</i>		
Hospital Advances for Self-Funded Claims	-	-
Net Income - NAIC SAP	<u>\$ 239,077,863</u>	<u>\$ (39,326,725)</u>
Statutory Surplus - MI OFIR	\$ 2,759,467,557	\$ 2,562,230,008
<i>MI OFIR Prescribed Practice</i>		
Two-Year Limitation on Premium Deficiency Reserves	(214,584,000)	(248,500,000)
Deferred Tax Impact of Two-Year PDR limit	42,917,000	49,700,000
Change in Non-admitted Assets	-	(22,600,000)
<i>MI OFIR Permitted Practice</i>		
Hospital Advances for Self-Funded Claims	<u>(45,989,000)</u>	<u>(64,700,000)</u>
Statutory Surplus - NAIC SAP	<u>\$ 2,541,811,557</u>	<u>\$ 2,276,130,008</u>

B. Use of Estimates in the Preparation of the Financial Statements

The preparation of statutory-basis financial statements, in conformity with the Annual Statement instructions and accounting practices prescribed or permitted by OFIR, requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the statutory-basis financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

C. Accounting Policy

1. Short-Term Investments - Short-term investments and cash equivalents are recorded at amortized cost, which approximates market value, and include commercial paper, certificates of deposits, and other readily marketable investments with initial maturities less than one year for short-term investments and three months or less for cash equivalents.
2. Bonds - Bonds not backed by other loans that have an NAIC designation of one or two are stated at amortized cost using the effective interest method. Bonds with an NAIC designation of three or higher are carried at the lower of amortized cost or fair market value.

3. Common Stocks Unaffiliated - Common stocks are recorded at fair value. Changes in unrealized appreciation and depreciation in the value of common stocks are reflected as direct increases or decreases in surplus.
4. Preferred Stocks - Preferred stocks are stated at book value for NAIC classes one and two and lower of book value or market for NAIC classes three through six. Changes in unrealized appreciation and depreciation in the value of preferred stocks are reflected as direct increases or decreases in surplus.
5. Mortgage loans on real estate – The Company does not have mortgage loans.
6. Loan-backed securities are stated at amortized cost. Premiums and discounts on loan-backed bonds and structured securities are amortized using the retrospective method based on anticipated prepayments at the date of purchase. Prepayment assumptions are obtained from broker-dealer survey values or internal estimates. Changes in estimated cash flows from the original purchase assumptions are accounted for using the prospective method. Should the present value of anticipated cash flows collected be less than the amortized cost basis, a determination will be made on whether the decline in value is other than temporary. If the Company has the ability and intent to hold the security to maturity but does not expect recovery of the carrying value, the credit portion of the decline is recognized as an impairment loss.
7. Investment in Subsidiaries and Goodwill - The Company uses the equity method and follows NAIC SAP in valuing its subsidiaries. In accordance with SSAP No. 97, *Business Combinations and Goodwill*, the Company reports its investments in subsidiaries inclusive of related goodwill balances. Included in the Company's common stock balance are the investments in Blue Care Network of Michigan (BCNM), Accident Fund Holding Inc. (AFHI) and LifeSecure Holdings, Inc. (LifeSecure). Goodwill is amortized over 10 years. Goodwill amortization recognized totaled \$6,663,900 for both years ended December 31, 2010 and 2009. The carrying value of these assets is reviewed for impairment at least annually or more frequently should circumstances indicate. The Company completed its annual impairment test as of December 31, 2010 and 2009 and no impairments were indicated.

The goodwill limitation calculated based on SSAP No. 68 at December 31, 2010 was \$249,361,510, and the Company's actual goodwill balance was \$19,991,700. As of December 31, 2010 and 2009, the Company's goodwill balances were fully admissible.

As of December 31, 2010 and 2009, the breakdown between goodwill and investments in subsidiaries is shown below.

	December 31, 2010 Statement Value	December 31, 2009 Statement Value
Common Stock Investments in Subsidiaries:		
Investment in BCNM*	\$ 537,314,000	\$ 423,459,780
Investment in Accident Fund Holdings, Inc	648,219,000	689,923,000
AFHI goodwill	19,991,700	26,655,600
Investment in LifeSecure	13,459,000	9,749,000
	<u>1,218,983,700</u>	<u>1,149,787,380</u>
Amount included in common stock	<u>\$ 1,218,983,700</u>	<u>\$ 1,149,787,380</u>
Summary:		
Investment in Subsidiaries	\$ 1,198,992,000	\$ 1,123,131,780
Goodwill	19,991,700	26,655,600
	<u>1,218,983,700</u>	<u>1,149,787,380</u>
Total	<u>\$ 1,218,983,700</u>	<u>\$ 1,149,787,380</u>

* Includes investments in BCNM, Blue Care of Michigan Inc, Blue Care Network Medical Malpractice Self-Insurance Trust, Blue Care Network Stop-Loss, and Casualty Self-Insurance Trust.

8. Investments in Joint Ventures, Partnerships and Limited Liability Companies - The Company has minor ownership interests in partnerships and limited liability companies. The Company carries the investment in partnership based on the underlying audited GAAP equity of the partnership. BCBSM's investment in National Account Service Company (NASCO) was reported as per SSAP 97 – *Investment in Subsidiary, Controlled and Affiliated Entities, A Replacement of SSAP No. 88*.
9. Derivatives – NOT APPLICABLE
10. Premium Deficiency Reserve - A liability for premium deficiency losses is recognized when it is probable that expected claim losses and allocable administrative expenses will exceed future premiums on existing health and other contracts without consideration of investment income. For purposes of premium deficiency losses, contracts are grouped in a manner consistent with the Company's method of acquiring, servicing and measuring the profitability of such contracts. Premium deficiency losses are generally released over the period that the contract is in a loss position. As disclosed in Note 30, the time period for premium deficiency calculations is limited to two years in accordance with OFIR prescribed practice.
11. Liabilities for Unpaid Claim, Claim Adjustment Expenses, and Advances to Providers - Liabilities for unpaid claims and claim adjustment expenses are actuarial estimates of outstanding claims, including claims incurred but not reported ("IBNR"). These estimates are based upon historical claims experience modified for current trends and changes in benefit coverage, which could vary as the claims are ultimately settled. Interim hospital advances are reported as advances to providers. Processing expense related to claims is accrued based on an estimate of expenses to process such claims. Revisions in actuarial estimates are reported in the period in which they arise.
12. Capitalization Policy – The Company has not modified its capitalization policy and meets the requirements of SSAP No. 87, *Capitalization Policy*.

13. Pharmaceutical Rebate Receivables – Pharmaceutical rebate accruals are calculated using recent history of rebates received to develop an estimate.
14. Real Estate – Real property occupied by the Company is stated at net book value and depreciation is calculated using the straight-line method over estimated useful lives ranging from 30 to 40 years for buildings. Real property held for sale is recorded at its estimated fair market value and not subject to further depreciation.
15. Long-Lived Assets - Long-lived assets held and used by the Company are reviewed for impairment based on market factors and operational considerations whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Long-lived assets ‘held for sale’ are no longer depreciated. The Company writes down the carrying amount of the long-lived asset to its fair value at the time an impairment has been determined.
16. Premiums and Fee Revenues - Premiums, which generally are billed in advance, are recognized as revenue during the respective periods of coverage. Premiums applicable to the unexpired portion of coverage are reflected in the accompanying statements of admitted assets, liabilities, and surplus — statutory basis as aggregate health policy reserves.

Fee revenue primarily consists of administrative fees for services provided under administrative service contracts (ASC), including management of medical services, claims processing, and access to provider networks. Under ASC arrangements, self-funded groups retain the primary underwriting risk of paying claims, and the Company retains an element of credit risk to providers in the event reimbursement is not received from the group; therefore, claims paid by the Company and the corresponding reimbursement of claims, plus administrative fees are netted. Amounts due from ASC groups are equal to the amounts required to pay claims and administrative fees. Administrative fees are earned as services are performed and are calculated based the number of members in a group or the group’s claim experience. The Company n agree to maintain certain performance standards with respect to its servicing obligati to the group. Penalties arising from non-performance of standards established are tracked and recorded as a reduction to the ASC administrative fees during annual settlement with the ASC group. Since benefit expenses for ASC arrangements are not the responsibility of the Company, claims paid by the Company and the corresponding reimbursement of claims are not reported in the accompanying statutory basis financial statements. Administrative fee revenues related to ASC arrangements are included as a reduction in operating expenses, cost containment expenses, and other claim adjustment expenses. Administrative fee revenues of \$713,566,254 and \$771,622,125 related to ASC arrangements are included as offset in operating expenses for the years ended December 31, 2010 and 2009, respectively.

2. ACCOUNTING CHANGES AND CORRECTIONS OF ERRORS

SSAP No. 43R — *Loan Backed and Structured Securities* — Effective September 2009, SSAP No. 43R requires the Company to periodically, at least quarterly, evaluate the collection of all contractual cash flows as probable or not probable. For investments in loan-backed and structured securities where cash flow collection is probable, the Company uses the retrospective approach to evaluate fair value. For investments where cash flow collection is not probable, the Company evaluates fair value based on the present value of the revised estimated cash flows and determines if the fair value of the security has declined below the amortized cost and assesses if that decline is considered to be other than temporary. If the decrease in the fair value of the security is deemed to be other than temporary, or the Company intends to sell the security or does not have the intent and ability to retain the security for a period of time sufficient to recover the amortized cost

basis, an other-than-temporary impairment shall be considered to have occurred in the security and the Company will include the difference between the revised fair value and the amortized cost as a realized loss. The adoption of SSAP No. 43R did not have a material impact on the Company's financial position or results of operations nor was there a cumulative effect adjustment needed.

SSAP No. 10R — *Income Taxes* — SSAP No. 10 normally allows the Company to recognize DTA in excess of DTL only to the extent that the gross DTA in excess of gross DTL are expected to be realized within one year of the balance sheet date, not to exceed 10% of the company's adjusted capital and surplus. Effective for annual periods ending December 31, 2009 through 2011, SSAP No. 10R temporarily allows the company to elect to recognize gross DTA in excess of gross DTL expected to be realized within three years of the balance sheet date, not to exceed 15% of the company's adjusted capital and surplus. In years subsequent to December 31, 2011, the company will revert back to the requirements under existing SSAP No. 10. In addition, starting in 2010, SSAP No. 10R requires additional disclosures on tax planning strategies. The Company adopted SSAP No. 10R on December 31, 2009 and elected to admit DTA pursuant to SSAP No. 10R and resulted in an increase in admitted DTA and surplus as of December 31, 2009 of \$47,212,262.

SSAP No. 100 — *Fair Value Measurements* — Effective December 31, 2010, with early adoption permitted for December 31, 2009, defines fair value for certain financial instruments and establishes a framework for measuring and reporting fair value. The Company opted to early adopt SSAP No. 100 effective December 31, 2009. As such, financial instruments defined in the guidance, are reported according to fair value hierarchy inputs assigned as Level 1, Level 2, and Level 3. For fair value measurements using significant unobservable inputs (Level 3), the Company will segregate the gains and losses in earnings and describe where those gains and losses are included in earnings, the portion attributable to changes in unrealized gains or losses still held as of the reporting date, and the applicable valuation technique. In 2010, nonsubstantive revisions to incorporate Accounting Standards Update (ASU) 2010-06, *Improving Disclosures about Fair Value Measurements*, were issued which no longer required a distinction between "recurring" or "nonrecurring". Amounts of significant transfers in and out of Level 1 and 2 fair value measurements including the reasons for the transfers should be separately disclosed. In the reconciliation for fair value measurements using unobservable inputs (Level 3), information about purchases, sales, issuances and settlements (gross basis) should be separately reported. Adoption of SSAP No. 100 and its revisions did not have an impact on the Company's financial position or results of operations.

SSAP No. 91R – *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities* – Effective for the Annual Statement reporting of December 31, 2010, SSAP No. 91R provides guidance on recording collateral received in a security lending transaction. If cash or securities that can be resold are received as collateral, such amounts would need to be reflected on the statutory basis financial statements. The adoption of this SSAP resulted in recording an asset - Security Lending Reinvested Collateral Assets with the offset recorded as a liability - Payable for Security Lending on the Statement of Admitted Assets, Liabilities, and Surplus – Statutory Basis. The adoption had no impact to net income or surplus.

SSAP No. 90 – *Accounting for the Impairment or Disposal of Real Estate Investments* – In August 2010, a nonsubstantive revision was issued to clarify when a company is required to test for impairment of company-occupied properties. The revision did not have an impact to the Company's financial position or results of operations.

3. BUSINESS COMBINATIONS - Effective March 31, 2009, the Company received approval from OFIR to merge Michigan Health Insurance Company (MHIC) into LifeSecure

Insurance Company (LifeSecure). Prior to the merger, both MHIC and LifeSecure were wholly owned subsidiaries of BCBSM. Upon the merger, MHIC's certificate of authority was terminated and except for the goodwill and intangible assets all its statutory assets and liabilities, including \$8,591,000 of cash and investments, were assumed by LifeSecure. The balance of goodwill and intangible assets of \$21,252,475 were written off in 2009.

4. DISCONTINUED OPERATIONS – NOT APPLICABLE

5. INVESTMENTS

A. Mortgage Loans – NOT APPLICABLE

B. Debt Restructuring – NOT APPLICABLE

C. Reverse Mortgages – NOT APPLICABLE

D. Loan-Backed Securities

- 1) Loan-backed securities are stated at amortized cost. Premiums and discounts on loan-backed bonds and structured securities are amortized using the retrospective method based on anticipated prepayments at the date of purchase. Prepayment assumptions are obtained from broker-dealer survey values or internal estimates. Changes in estimated cash flows from the original purchase assumptions are accounted for using the prospective method.
- 2) The following table reflects, in aggregate, all securities within the scope of SSAP No. 43R, Loan-Backed and Structured Securities, with a recognized other-than-temporary impairment, classified by management's current outlook regarding the security.

	1 Amort Cost Before OTTI	2 OTTI Recog in Loss	(1-2) Fair Value
Aggregate Intent to Sell	\$ 2,678,781	\$ 303,713	\$ 2,375,068
Aggregate Intent & Ability to Hold and No Intent to Sell	-	-	-
Total	\$ 2,678,781	\$ 303,713	\$ 2,375,068

3) The securities, with recognized other-than-temporary impairment, that are currently held by the Company and which present value of cash flows expected to be collected is less than the amortized cost basis of the securities are disclosed in the following table:

CUSIP	Amort Cost Before OTTI	Proj Cash Flow	Recognized OTTI	Amort Cost After OTTI	Fair Value 12/31/10
02660TBM4	72,624	69,018	3,606	69,018	69,018
03072SJ97	319,590	300,231	19,359	300,231	300,231
03072SU94	127,840	125,845	1,995	125,845	125,845
040104BG5	346,399	295,286	51,113	295,286	295,286
1266715K8	85,857	60,001	25,856	60,001	84,819
45660LFN4	335,165	311,217	23,948	311,217	311,217
52521YAC0	428,314	340,368	87,946	340,368	317,460
576433XW1	300,835	273,887	26,948	273,887	273,887
64352VKU4	187,520	185,130	2,390	185,130	185,130
805564QW4	163,526	129,873	33,653	129,873	129,873
81744LAA2	123,523	102,301	21,222	102,301	101,610
86358EMR4	187,588	181,911	5,677	181,911	181,911
Total	2,678,781	2,375,068	303,713	2,375,068	2,376,287

E. Repurchase Agreements and/or Securities Lending Transactions

- 1) Repurchase Agreements – NOT APPLICABLE
- 2) The Company has no pledged assets under security lending transaction agreements.
- 3) The Company, in the normal course of business, enters into security lending agreements with a custodian bank. Under these agreements, the Company requires approximating at least 102% of the value of the securities loaned as collateral. The Company receives cash and non-cash collateral. The cash collateral is reinvested by the custodian bank in commingled trusts. The non-cash collateral is maintained in a separate account until the transaction is completed. At December 31, 2010, for its loaned securities of \$446,578,042, the Company received cash collateral of \$417,738,094 and non-cash collateral of \$38,035,382. The fair value of the cash collateral received is \$416,440,220. The age of the non-cash collateral is 30 days or less. The security lending agreements are primarily overnight in nature and subject to renewal or termination.

F. Real Estate

The Company entered into a long-term lease to occupy space in the GM Renaissance Center in downtown Detroit, into which it plans to move its personnel currently located at the Company's service center in Southfield, Michigan. The Company intends to dispose its Southfield Metro properties and accordingly ceased depreciating such properties and changed the status of the property to "held for sale". Also, during the year, the Company changed the status of its Ionia Blue House property located in Lansing, Michigan to "held for sale" and is currently relocating its employees located in this property to another location. Consistent with the provisions of SSAP No. 90, *Accounting for the Impairment or Disposal of Real Estate Investments*, the Company wrote these properties down to their estimated fair market value. As a result the Company recorded \$31,941,000 and \$63,000 impairment loss on its Southfield and Ionia Blue House properties, respectively. The total impairment loss is reported with the net realized gains (losses) line in the Statement of Revenue and Expenses.

G. Low-Income Housing Tax Credits – NOT APPLICABLE

6. JOINT VENTURES, PARTNERSHIPS, AND LIMITED LIABILITY COMPANIES
 - A. The Company has no investments in partnerships or limited liability companies that exceed 10 percent of its admitted assets.
 - B. The Company recognized a \$288,000 impairment for its investments in partnerships or limited liability companies during 2010.
7. INVESTMENT INCOME
 - A. Investment income due and accrued with amounts that are over 90 days past due will be non-admitted.
 - B. No investment income due and accrued was non-admitted at December 31, 2010.
 - C. The Company has an established investment impairment policy and continuously monitors its investments for declines in market value below book value that may be other than temporary (OTTI). Under the provisions of INT 06-07 OTTI does not necessarily mean permanent, but recovery is not expected in the near-term. To determine if a security is OTTI impaired, the Company regularly performs a review of its securities. Factors taken into account for each individual security include: the length of time and extent to which the fair value has been less than the carrying value; the underlying financial condition and the specific circumstances that are impacting the issuer in the marketplace.

For internally-managed debt securities, an other-than-temporary impairment (OTTI) is present when a credit loss is determined to exist for the underlying security or the Company has the intent to sell the security before anticipated recovery or the Company has intent to hold and anticipates that the security will not recover. A credit loss for impairment purposes occurs when the Company does not anticipate the recovery of amortized cost. For loan-backed securities, if the company has the ability and intent to hold the security to maturity, but does not expect recovery of the carrying value, the credit portion of the decline is recognized as an impairment loss. Interest related impairments are not recognized as an impairment loss. Specific criteria for evaluating debt securities for impairment include the length of time and extent to which the fair market value was below carrying value, NAIC ratings, interest coverage ratios, and ratings outlook. The write-down to fair market value of debt securities resulted in approximately \$8,894,218 and \$32,658,000 in 2010 and 2009 of OTTI losses.

For internally-managed equity securities, the Company evaluates whether it has the intent and ability to hold the security using a five-year rolling average to determine if there will be full recovery in value. For the years ended December 31, 2010 and 2009, OTTI losses of approximately \$7,419,936 and \$14,474,000 were recorded.

For internally-managed investments with market values below cost that were determined not to have OTTI, at December 31, 2010, the Company regularly monitors the existing unrealized losses and evaluates potential impairments to determine if OTTI needs to be recorded. For investments managed by outside investment managers, OTTI is presumed to exist when market values are below cost because the Company can not assert the "intent and ability to hold to recovery".

8. DERIVATIVE INSTRUMENTS – NOT APPLICABLE

9. INCOME TAXES

A. The components of the net deferred tax assets as of December 31 are as follows:

(1)	12/31/2010			12/31/2009			Change		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	Ordinary	Capital	(Col. 1+2) Total	Ordinary	Capital	(Col. 4+5) Total	Ordinary	Capital	(Col. 7+8) Total
(a) Gross Deferred Tax Assets	212,184,273	-	212,184,273	207,626,308	22,211,479	229,837,787	4,557,965	(22,211,479)	(17,653,514)
(b) Statutory Valuation Allowance Adjust	-	-	-	-	-	-	-	-	-
(c) Adjusted Gross Deferred Tax Assets (1a - 1b)	212,184,273	-	212,184,273	207,626,308	22,211,479	229,837,787	4,557,965	(22,211,479)	(17,653,514)
(d) Deferred Tax Liabilities	(179,901,243)	-	(179,901,243)	(69,977,255)	-	(69,977,255)	(109,923,988)	-	(109,923,988)
(e) Subtotal (Net Deferred Tax Assets) (1c - 1d)	32,283,030	-	32,283,030	137,649,053	22,211,479	159,860,532	(105,366,023)	(22,211,479)	(127,577,502)
(f) Deferred Tax Assets Nonadmitted	-	-	-	22,550,362	22,211,479	44,761,841	(22,550,362)	(22,211,479)	(44,761,841)
(g) Net Admitted Deferred Tax Assets (1e - 1f)	32,283,030	-	32,283,030	115,098,691	-	115,098,691	(82,815,661)	-	(82,815,661)

(4)	12/31/2010			12/31/2009			Change		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	Ordinary	Capital	(Col. 1+2) Total	Ordinary	Capital	(Col. 4+5) Total	Ordinary	Capital	(Col. 7+8) Total

Admission Calculation Components

SSAP No. 10R, Paragraphs 10.a., 10.b., and 10.c.:

(a) SSAP No. 10R, Paragraph 10.a.	-	-	-	-	-	-	-	-	-
(b) SSAP No. 10R, Paragraph 10.b. (the lesser of paragraph 10.b.i. and 10.b.ii below)	59,325,929	-	59,325,929	67,886,431	-	67,886,431	(8,560,502)	-	(8,560,502)
(c) SSAP No. 10R, Paragraph 10.b.i.	59,325,929	-	59,325,929	67,886,431	-	67,886,431	(8,560,502)	-	(8,560,502)
(d) SSAP No. 10R, Paragraph 10.b.ii.	256,025,352	-	256,025,352	242,181,111	-	242,181,111	13,844,241	-	13,844,241
(e) SSAP No. 10R, Paragraph 10.c.	59,325,929	-	59,325,929	67,886,431	-	67,886,431	(8,560,502)	-	(8,560,502)
(f) DTA admissible under a through c	59,325,929	-	59,325,929	67,886,431	-	67,886,431	(8,560,502)	-	(8,560,502)

Admission Calculation Components

SSAP No. 10R, Paragraph 10.e

(g) SSAP No. 10R, Paragraph 10.e.i.	-	-	-	-	-	-	-	-	-
(h) SSAP No. 10R, Paragraph 10.e.ii (the lesser of paragraph 10.e.ii.a. and 10.e.ii.b. below)	55,476,071	-	55,476,071	47,212,262	-	47,212,262	8,263,809	-	8,263,809
(i) SSAP No. 10R, Paragraph 10.e.ii.a.	55,476,071	-	55,476,071	47,212,262	-	47,212,262	8,263,809	-	8,263,809
(j) SSAP No. 10R, Paragraph 10.e.ii.b.	384,038,027	-	384,038,027	363,271,667	-	363,271,667	20,766,360	-	20,766,360
(k) SSAP No. 10R, Paragraph 10.e.iii.	55,476,071	-	55,476,071	47,212,262	-	47,212,262	8,263,809	-	8,263,809
(l) DTA admissible under d-e	55,476,071	-	55,476,071	47,212,262	-	47,212,262	8,263,809	-	8,263,809

Used in SSAP No. 10R, Paragraph 10.d.

(m) Total Adjusted Capital	XXX	XXX	2,759,467,557	XXX	XXX	2,562,230,008	XXX	XXX	
(n) Authorized Control Level	XXX	XXX	395,551,652	XXX	XXX	394,335,822	XXX	XXX	

12/31/2010			12/31/2009			Change		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
		(Col. 1+2)			(Col. 4+5)			(Col. 7+8)
Ordinary	Capital	Total	Ordinary	Capital	Total	Ordinary	Capital	Total

SSAP No. 10R, Paragraphs 10.a., 10.b., and 10.c.:

(a) Admitted deferred tax assets	59,325,929	-	59,325,929	67,886,431	-	67,886,431	(8,560,502)	-	(8,560,502)
(b) Admitted Assets			32,283,050	XXXX	XXXX	137,863,684			
(c) Adjusted Statutory Surplus*			256,025,352	XXXX	XXXX	242,181,111			
(d) Total Adjusted Capital from DTAs				XXXX	XXXX				

Increases due to SSAP No. 10R, Paragraph 10.e.

(e) Admitted Deferred Tax Assets	55,476,580	-	55,476,580	47,212,262	-	47,212,262	8,264,318	-	8,264,318
(f) Admitted Assets	32,283,030	-	32,283,030	115,098,691	-	115,098,691	(82,815,661)	-	(82,815,661)
(g) Statutory Surplus	384,038,027	-	384,038,027	363,271,667	-	363,271,667	20,766,360	-	20,766,360

Deferred tax liability

12/31/2010		
(1)	(2)	(3)
		(Col. 1+2)
Ordinary	Capital	Total
Percent	Percent	Percent

Net admitted DTA

Impact of Tax Planning Strategies

(a) Adjusted Gross DTAs			
(% of Total Adjusted Gross DTAs)			
(b) Net Admitted Adjusted Gross DTAs	80,315,138	-	80,315,138
(% of Total Net Admitted Adjusted Gross DT)	249%	-	249%

B. Temporary differences for which a DTL has not been established: N/A.

C. Current income taxes consist of the following major components:

	(1) 12/31/2010	(2) 12/31/2009	(3) (Col 1-2) Change
1. Current Income Tax			
(a) Federal	98,558,954	20,398,755	78,160,199
(b) Foreign	-	-	-
(c) Subtotal	98,558,954	20,398,755	78,160,199
(d) Federal income tax on net capital gains	(12,209,000)	(18,387,875)	6,178,875
(e) Utilization of capital loss carryforwards	-	(10,882,000)	10,882,000
(f) Other	(177,485,801)	(15,465,000)	(162,020,801)
(g) Federal and foreign income taxes incurred	(91,135,847)	(24,336,120)	(66,799,727)
2. Deferred Tax Assets			
(a) Ordinary			
(1) Discounting of unpaid losses	1,906,338	12,712,300	(10,805,962)
(2) Unearned premium reserve	80,469,414	71,910,614	8,558,800
(3) Policyholder reserves	-	400,068	(400,068)
(4) Investments	-	-	-
(5) Deferred acquisition costs	-	-	-
(6) Policyholder dividend accrual	-	-	-
(7) Fixed assets	-	-	-
(8) Compensation and benefits accrual	103,595,783	108,753,296	(5,157,513)
(9) Pension accrual	-	-	-
(10) Receivables - nonadmitted	-	-	-
(11) Net operating loss carryforward	-	-	-
(12) Tax credit carryforward	-	-	-
(13) Other (including items <5% of total ordinary tax assets)	26,212,738	13,850,030	12,362,708
(99) Subtotal	212,184,273	207,626,308	4,557,965
(b) Statutory valuation allowance adjustment	-	-	-
(c) Nonadmitted	-	22,550,362	(22,550,362)
(d) Admitted ordinary deferred tax assets (2a99 - 2b - 2c)	212,184,273	185,075,946	27,108,327
(e) Capital			
(1) Investments	-	22,211,479	(22,211,479)
(2) Net capital loss carryforward	-	-	-
(3) Real estate	-	-	-
(4) Other (including items <5% of total capital tax assets)	-	-	-
(99) Subtotal	-	22,211,479	(22,211,479)
(f) Statutory valuation allowance adjustment	-	-	-
(g) Nonadmitted	-	22,211,479	(22,211,479)
(h) Admitted capital deferred tax assets (2e99 - 2f - 2g)	-	-	-
(i) Admitted deferred tax assets (2d + 2h)	212,184,273	185,075,946	27,108,327
3. Deferred Tax Liabilities:			
(a) Ordinary			
(1) Investments	-	-	-
(2) Fixed assets	47,478,508	47,209,604	268,904
(3) Deferred and uncollected premium	-	-	-
(4) Policyholder reserves	-	-	-
(5) Other (including items <5% of total ordinary tax liabilities)	119,188,029	22,767,651	96,420,378
(99) Subtotal	166,666,537	69,977,255	96,689,282
(b) Capital			
(1) Investments	13,234,706	-	13,234,706
(2) Real estate	-	-	-
(3) Other (including items <5% of total capital tax liabilities)	-	-	-
(99) Subtotal	13,234,706	-	13,234,706
(c) Deferred tax liabilities (3a99 + 3b99)	179,901,243	69,977,255	109,923,988
4. Net deferred tax assets/liabilities (2i - 3c)	32,283,030	115,098,691	(82,815,661)

- D. The actual effective tax rate differs from the effective Alternative Minimum Tax (AMT) rate of 20 % primarily due to the tax impact recognized on the timing differences.
- E. Under current tax law, the Company is subject to the 20% AMT rate. Given the preference items afforded Blue Cross and Blue Shield organizations, management believes it is likely to remain an AMT taxpayer. The deferred tax assets are recorded at the AMT tax rate of 20 %. In addition, the Company has an AMT credit carryforward of \$418,408,000. Even though the credit can be carried forward indefinitely and will not expire, the credit is not carried as a deferred tax asset as the utilization of the credit will not occur, unless the Company's tax preferences as a Blue Cross and Blue Shield organization are legislatively repealed.
- F. The Company and its taxable subsidiary Accident Fund Holdings file a consolidated 2010 federal income tax return. Each taxable subsidiary is responsible for its own federal tax liability and the Company has tax sharing agreements in place with Accident Fund Holdings. Another subsidiary, LifeSecure, is also taxable, but existing tax rules do not permit consolidation with nonlife entities for the first five years of ownership. The first year of consolidation with LifeSecure will be tax year 2012. The company's tax returns have been audited and settled through 2005. The Company's tax returns for 2006 were subject to a limited scope audit that resulted in no findings. In February 2011, the IRS began the audit of the Company's tax returns for the period 2006-2008.
- G. Effective for tax years beginning in 2009, under GAAP and SSAP No. 5, the Company is required to evaluate all tax positions as to their relative uncertainty/certainty. On examination of all relevant facts and circumstances for the Company's tax issues, it was determined that no liability for the Company's tax issues was warranted as of December 31, 2010.
- H. SSAP No. 10 normally allows the Company to recognize gross DTA in excess of gross DTL only to the extent that the gross DTA in excess of gross DTL are expected to be realized within one year of the balance sheet date, not to exceed 10% of the Company's adjusted capital and surplus. Effective for annual periods ending December 31, 2009 and December 31, 2010, SSAP No. 10R temporarily allows the Company to elect to recognize gross DTA in excess of gross DTL expected to be realized within three years of the balance sheet date, not to exceed 15% of the Company's adjusted capital and surplus. The NAIC approved extension of the current SSAP 10R provision on deferred tax asset guidance for another year – until year-end 2011. In years subsequent to December 31, 2011 the Company will revert back to the requirements under existing SSAP No. 10. In applying the criteria to determine its gross deferred tax asset of \$212,184,000 in 2010, the Company did not utilize any explicit tax planning strategies.

10. INFORMATION CONCERNING PARENT, SUBSIDIARIES AND AFFILIATES AND OTHER RELATED PARTIES

The Company is incorporated as a nonprofit corporation under the provisions of P.A. 350 of 1980. Hospital, medical and other health benefits are provided under contracts with subscribers. The Company owns 100% of Blue Care Network of Michigan ("BCNM"), a HMO subsidiary that provides health care services to subscribers and contracts with various physician groups, hospitals and other health care providers to provide such services. The Company also owns 100% of Accident Fund Holdings, Inc. ("AFHI"), the holding company of Accident Fund Insurance Company of America ("Accident Fund"), a provider of workers' compensation insurance. Additionally, the Company owns 100% of LifeSecure, a long-term care insurance subsidiary.

The Company has agreements with each of its wholly owned subsidiaries under which both or either parties may provide services to each other. The agreements provide for

monthly payments and a year-end settlement based on actual cost of services performed. All related-party receivable and payable balances are recorded as either amounts due to or from subsidiaries and affiliates.

At December 31, 2010 and 2009, BCBSM had receivables from subsidiaries amounting to \$92,583,505 and \$100,977,012, respectively, and payable to subsidiaries of \$17,144,256 and \$33,116,534, respectively.

The receivables are primarily due to management and administrative services performed by the Company. In addition, as described in Note 12, an intercompany receivable in the amount of \$72,152,782 was established for pension and postretirement costs that will be paid to the Company by BCNM over a 20-year period as a result of the BCNM employees becoming BCBSM employees effective January 1, 2009. The outstanding balance of this intercompany receivable as of December 31, 2010 and 2009 is \$64,788,641 and \$68,458,000, respectively.

The payables are primarily attributable to the intercompany deferred tax and tax sharing amounts of \$14,375,499 and \$28,211,235 at 2010 and 2009, respectively for the Company's taxable subsidiaries. BCNM participates in the BCBSM hospital settlement process. As related to that process, BCNM's portion of underpayments due to hospitals or overpayment recoveries from hospitals will be accrued to or paid by the Company as applicable. As of December 31, 2010, settlements owed to BCNM of \$1,091,418 are included in the Company's inter-company payable.

The Company also performs various claims processing and management services. As of December 31, 2010 and 2009, these services totaled \$1,161,359,678 and \$1,116,746,129 respectively. No dividends were declared from subsidiaries in 2010 or 2009.

The Company has provided the following guarantees for its subsidiaries.

Blue Care Network of Michigan - In accordance with the Blue Cross Blue Shield Association guidelines, the Company guarantees to the full extent of its assets, all of the contractual and financial obligations of Blue Care Network of Michigan and Blue Care of Michigan, Inc and their subsidiaries, to its customers.

LifeSecure – The Company shall take all actions reasonably necessary to insure that LifeSecure is in compliance with Rhode Island's and other applicable states' statutory requirements including maintaining a level of capital and surplus required by the applicable provisions of the Insurance Code of the state of Rhode Island and other applicable law. Also, the Company executed a financial guarantee agreement with American Fidelity Assurance Company (AFA) to facilitate the reinsurance transaction between LifeSecure and AFA. The financial obligation of the guarantee to the Company is expected not to exceed \$10,000,000.

11. DEBT

The Company, as a member of the FHLBI, has short-term, long-term and line of credit borrowing privileges. Outstanding borrowings with the FHLBI total \$694,046,626 and \$708,521,874 at December 31, 2010 and 2009, respectively. The \$46,000,000 acquired in 2006 was borrowed under the FHLBI's Community Investment Program to finance the Company's Detroit Campus Improvement Project which included the construction of a parking garage utilized by the Company employees and other land improvements. The borrowings have a 10-year term and are subject to floating interest rate provisions that are reset every three months based on the FHLBI's cost of funds. The remaining borrowings were obtained primarily to take advantage of attractive interest rates and favorable borrowing terms. All loans are collateralized by government securities at 105-110% of the outstanding loan balance. The weighted-average borrowing rate at December 31, 2010 and 2009, is 2.00% and 1.66%, respectively. Total interest paid and accrued as of December 31, 2010 and 2009, was \$12,913,000 and \$12,035,000, respectively. At

December 31, 2010 and 2009, the carrying value of the outstanding debt amount approximates fair value.

A breakdown of the FHLBI outstanding loans as of December 31, 2010 and 2009, is as follows:

Year <u>Originated</u>	<u>Term</u>	Interest <u>Rate</u>	12/31/2010 <u>Balance</u>	12/31/2009 <u>Balance</u>
2006	10 year	0.18%	\$ 46,000,000	\$ 46,000,000
2007	5 year	4.14%	-	150,000,000
2008	5 year	2.91%	50,000,000	50,000,000
2009	5 year	2.59%	47,390,582	61,966,239
2009	1 year	0.81%	-	200,000,000
2009	90 days	0.40%	-	200,000,000
2010	5 year	3.40%	150,000,000	-
2010	1 year	0.80%	200,000,000	-
2010	7 year	2.20%	200,000,000	-
Total outstanding loans			\$ 693,390,582	\$ 707,966,239
Accrued interest			656,044	555,635
Ending Balance			\$ 694,046,626	\$ 708,521,874

As of December 31, 2010, future minimum payments required for the outstanding borrowings due to FHLBI are as follows:

**Years Ending
December 31**

2011	\$ 228,312,132
2012	27,073,866
2013	76,876,164
2014	10,944,157
2015	159,315,500
2016	50,452,000
2017 and thereafter	203,520,000
Total minimum payments	756,493,819
Less amount representing imputed interest	(62,447,193)
FHLBI balance at December 31, 2010	\$ 694,046,626

12. RETIREMENT PLANS, DEFERRED COMPENSATION, POST EMPLOYMENT BENEFITS AND COMPENSATED ABSCENCES AND OTHER POSTRETIREMENT BENEFIT PLANS

A. Defined Benefit Plan

The Company has two defined benefit pension plans as follows:

Retirement Account Plan – Non-represented employees who meet age and service requirements participate in this plan. Pension benefits of participants in this plan become vested after three years of service. Participants have an account balance to which interest and earnings credits are added. Subject to an annual 4 percent minimum, interest is credited quarterly based on the rate announced by the Company for the plan year. Earnings credits are credited on a monthly basis as shown on the following table. Employees can elect to receive lump sum value of their vested account balance or monthly payments at retirement or termination.

For employees hired:	Prior to January 1, 2007	On or after January 1, 2007
Annual earnings credits	6% - 10%	3% - 5%
Annual transition credits through 2008	2%	2% through 12/31/2008; N/A thereafter

Represented Employees' Retirement Income Plan - Represented employees who meet age and service requirements participate in this plan. Pension benefits of this plan's participants become vested after three years of service if hired after January 1, 2009 and five years of service if hired prior January 1, 2009. This defined benefit plan provides a benefit based on average monthly earnings and credited service years. Effective January 1, 2009, the plan provides an account balance that grows through earnings and interest credits. Each month, the Company will credit 6.4 percent of the participants' monthly adjusted W-2 pay. Interest is credited quarterly and is based on prior August one-year Treasury bill rate. Employees can elect to receive lump sum value of their vested account balance or monthly payments at retirement or termination.

The Company's workforce was significantly reduced in 2009 as employees took advantage of the Company-sponsored retirement packages. Upon retirement, most non-represented employees elected to receive their accumulated pension benefits as a lump-sum payment. Given the large number of retirements and associated lump-sum pension settlements, accounting rules require that certain unrecognized pension expense attributable to the retirees be recognized as additional pension expense in 2009. The additional pension expense, attributable to such items as actuarial gains and losses and past plan amendments, is \$42,058,000 and \$7,872,000 for postretirement benefit expense.

Effective, January 1, 2009, all employees of Blue Care Network, exclusive of employees working at Blue Care Network's health center facilities, became employees of the Company. As part of the employee transfer, the Company assumed responsibility for administering and funding pension and other postretirement benefits for the former Blue Care Network employees and retirees. Current pension and postretirement costs are reimbursed to the Company from Blue Care Network on a pay as you go basis. Intercompany cash transfers of \$3,122,000 and \$2,579,000 in 2010 and 2009, respectively were made between Blue Care Network and the Company for pension costs. Also, in 2010, BCN paid the Company \$5,458,000 for its share of the post retiree health care

costs. In exchange for assuming the prior years unfunded postretirement health obligation of \$72,153,000, the parties executed an intercompany transfer agreement, whereby Blue Care Network will repay the obligation assumed by the Company with annual installments, over a 20-year term, of \$3,608,000 annually beginning in 2009. The intercompany postretirement balance was \$64,938,000 and \$68,545,000 at 2010 and 2009, respectively.

The plan assets for both the non-represented and represented employees pension plans are held in a Master Trust with State Street Bank. Each plan owns its allocable share of all Master Trust assets. Master Trust assets are for the exclusive benefit of participants and can only be used to pay plan benefits and administrative expenses. Plan assets in the Master Trust are currently managed by 11 external investment managers with assets allocated to equity, fixed-income securities, cash and alternative investments based on investment policies and objectives.

The Company has developed a pension asset investment policy based on its objectives, characteristics of pension liabilities, capital market expectations, and asset-liability projections. This policy is long-term oriented and consistent with the Company's risk posture and periodically reviewed by the Pension Asset Advisory Committee. In November 2010, the Pension Advisory Committee changed the asset allocation under the pension investment policy. It is expected that the new pension asset allocation will reduce balance sheet and funding volatility for the Company while ensuring the continued maintenance of trust assets sufficient to cover plan benefits and expenses.

Under the new pension asset allocation policy, the pension asset allocation will ultimately move to an asset allocation of 60% long duration fixed income securities and 40% return-seeking assets. Return-seeking assets under the policy are defined as any asset class other than long duration fixed income securities and will primarily include publicly traded equities, publicly traded high-yield fixed income securities, alternative assets and cash. Under the new policy, at least 95% of pension assets will be invested in publicly traded equities and fixed income securities and cash. The pension asset allocation will occur over the next 5-7 years as the funded status of the pension improves and depending on market conditions.

Under the previous pension asset allocation policy, the Company used a mix of core and satellite managers to actively manage pension assets consistent within the investment manager guidelines, and target asset allocations described in the policy. The former pension asset policy included a target allocation summarized in the table below and a range of plus or minus 3% of the target established, and at least 95% of pension assets were normally invested in publicly traded stocks and fixed income securities.

The Company's retirement income plan weighted-average target asset allocation and actual asset allocation at September 30, 2010 and 2009, by asset category are as follows:

Asset Category	Target	2010	2009
Equity securities	70.0 %	71.0 %	66.0 %
Debt securities	25.0	24.0	26.0
Other	5.0	5.0	8.0

As of December 31, 2010, approximately 12.5% of the assets in the pension trust were invested in long duration fixed income securities and 82.5% were in various classes of returning seek assets.

The Company provides certain health care and selected other benefits to all employees and dependents of employees who retire from active employment or who become disabled and meet the following benefit and service eligibility requirements:

Nonrepresented employees hired:

	Prior to 1/1/04	After 1/1/04 but before 1/1/07	On or after 1/1/07
Years of service requirement	10 after age 45	15 after age 45	15 after age 45
Participants benefit cost responsibility	N/A	N/A	100%
Cap on annual increase in health care costs paid by the Company if not retired by 1/1/10 (a)	4%	4%	N/A

(a) This revision took effect January 1, 2009. Any annual increase in cost above 4% must be paid by the plan participant.

Represented employees eligible to retire:

	Prior to 12/31/16	After 12/31/16
Years of service requirement	10 after age 45	15 after age 45
Premium sharing	No	Yes

Effective January 1, 2008, and January 1, 2009, all participants in the non-represented plan and the represented plan, respectively, will be required to enroll in the Medicare Advantage program upon reaching age 65.

This benefit is subject to revision at the discretion of the Chief Executive Officer for non-represented employees and for represented employees, subject to collective bargaining agreements.

A summary of assets, obligations, and assumptions of the pension and other postretirement benefit plans at plan measurement dates of September 30, 2010 and 2009, and as recorded as of December 31, 2010 and 2009, are as follows:

1) Change in benefit obligation:

	Pension Benefits		Postretirement Benefits	
	2010	2009	2010	2009
Change in benefit obligation:				
Benefits obligation — beginning of year	\$ 1,004,090,000	\$ 742,982,000	\$ 475,003,000	\$ 282,958,000
Service cost	33,290,000	29,811,000	23,994,000	24,047,000
Interest cost	59,264,000	64,349,000	29,672,000	29,335,000
Actuarial loss (gain)	94,978,000	192,968,000	130,405,000	108,812,000
Benefits and administrative expenses paid	(90,017,000)	(123,617,000)	(26,430,000)	(23,775,000)
Amendments	-	44,000	-	(625,000)
BCN employee merger	-	93,003,000	-	45,542,000
Curtailment/settlement recognition	-	4,550,000	-	8,709,000
Benefits obligation — end of year	<u>\$ 1,101,605,000</u>	<u>\$ 1,004,090,000</u>	<u>\$ 632,644,000</u>	<u>\$ 475,003,000</u>

2) Change in plan assets:

	Pension Benefits		Postretirement Benefits	
	2010	2009	2010	2009
Fair value of plan assets—beginning of year	\$ 727,241,000	\$ 692,844,000	\$ -	\$ -
Actual return on plan assets	78,042,000	(5,911,000)	-	-
Contributions received	7,447,000	70,955,000	-	-
Benefits and administrative expenses paid		(121,009,000)	-	-
BCN Merger	(86,970,000)	90,362,000	-	-
Fair value of plan assets—end of year	<u>\$ 725,760,000</u>	<u>\$ 727,241,000</u>	<u>\$ -</u>	<u>\$ -</u>

3) Funded Status:

	Pension Benefits		Postretirement Benefits	
	2010	2009	2010	2009
Projected benefit obligation	\$ 1,101,605,000	\$ 1,004,090,000	\$ 632,644,000	\$ 475,003,000
Fair value of plan assets	<u>725,760,000</u>	<u>727,241,000</u>	<u>-</u>	<u>-</u>
Unfunded status	375,845,000	276,849,000	632,644,000	475,003,000
Unamortized prior service cost	(6,747,000)	(7,342,000)	42,610,000	52,086,000
Unrecognized net (loss) gain	(430,751,000)	(336,105,000)	(215,989,000)	(90,384,000)
Contribution between measurement date and fiscal year end	(815,000)	(708,000)	-	-
Additional minimum liability	<u>345,854,000</u>	<u>272,512,000</u>	<u>-</u>	<u>-</u>
Net pension liability	<u>\$ 283,386,000</u>	<u>\$ 205,206,000</u>	<u>\$ 459,265,000</u>	<u>\$ 436,705,000</u>
Accrued pension expense included in other liabilities	\$ 283,386,000	\$ 205,206,000	\$ 459,265,000	\$ 436,705,000
Information for pension plans with a projected benefit obligation in excess of plan assets:				
Projected benefit obligation	1,101,604,000	1,004,090,000	-	-
Accumulated Benefit Obligation	1,009,960,000	933,154,000	-	-
Fair value of plan assets	725,760,000	727,241,000	-	-

- 4) Accumulated benefit obligation for fully vested and partially vested employees only to the extent of their vested amounts at December 31, 2010 and 2009 is as follows:

	Pension Benefits		Postretirement Benefits	
	2010	2009	2010	2009
Accumulated benefit obligation for fully vested and partially vested employees	\$ 1,009,960,000	\$ 933,154,000	\$ -	\$ -

- 5) Projected benefit obligation at December 31, 2010 and 2009, for non-vested employees is as follows:

	Pension Benefits		Postretirement Benefits	
	2010	2009	2010	2009
Projected benefit obligation for non-vested employees	\$ 14,435,000	\$ 11,325,000	\$ 142,462,000	\$ 112,573,000

- 6) Components of net periodic benefit cost at December 31, 2010 and 2009:

	Pension Benefits		Postretirement Benefits	
	2010	2009	2010	2009
Service cost	\$ 33,290,000	\$ 29,811,000	\$ 23,994,000	\$ 24,047,000
Interest cost	59,264,000	64,349,000	29,672,000	29,335,000
Expected return on plan assets	(81,042,000)	(81,025,000)	-	-
Amortization	3,959,000	(2,050,000)	(4,676,000)	(8,315,000)
Net periodic benefit cost	15,471,000	11,085,000	48,990,000	45,067,000
Curtailement/settlement	(32,000)	42,058,000	-	7,872,000
Total Benefit Cost	<u>\$ 15,439,000</u>	<u>\$ 53,143,000</u>	<u>\$ 48,990,000</u>	<u>\$ 52,939,000</u>

- 7) Minimum pension liability adjustment

Pursuant to the guidance contained in SSAP No. 89, *Accounting for Pensions*, when the accumulated benefit obligation (ABO) of the pension plan exceeds fair value of plan assets at the measurement date, an additional minimum liability (AML) is required to be recognized in the Company's statutory basis financial statements, with a corresponding reduction to statutory surplus. The AML amounts at December 31, 2010 and 2009 are \$345,854,000 and \$272,512,000. The AML was largely due to decline in the financial markets which results in lower asset values and discount rates used to measure the pension plan obligations.

- 8) The assumptions used in determining the actuarial present value of the projected benefit obligations at December 31, 2010 and 2009, as listed above are as follows:

	Pension Benefits		Postretirement Benefits	
	2010	2009	2010	2009
Discount rate	5.25%	5.90%	5.70%	6.25%
Rate of compensation increase	5.59%	4.75%		
Expected long-term rate of return on plan assets	9.00%	9.00%		

For 2011, the expected long-term rate of return on assets will be 8%.

- 9) The measurement date used to determine other post-retirement benefit measurements for post-retirement benefit plans that make up at least the majority of plan assets and benefit obligations was September 30, 2010
- 10) For 2010 measurement purposes, the health care trend rate on covered postretirement benefits is assumed to be:

	Pre 65	Post 65 Non Medicare Advantage	Post 65 Medicare Advantage
	Trend Rate in 2010	9%	8%	15%
Grading down to in 2020 and beyond	5%	5%	5%

For 2010 measurement purposes, the drug care trend rate on covered postretirement benefits is assumed to be 9% for 2011, ratably downgrading to 5% by 2016 and all years thereafter.

- 11) Assumed health care cost trend rates have a significant effect on the amounts reported for the health care plans. A one-percentage-point change in assumed health care cost trend rates would have the following effects:

	One Percentage Point Increase	One Percentage Point Decrease
Effect on total of service and interest cost components	\$ 7,132,000	\$ 5,930,000
Effect on postretirement benefit obligation	119,127,000	87,242,000

12) The fair values of the Company's retirement income plan assets by asset category as of September 30, 2010 are as follows:

	Fair Value Measurements Using			Total
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
Cash equivalents	\$ 31,844,000	\$ 38,000	\$ -	\$ 31,882,000
Commingled Pension Trust ^(A)	-	215,845,000	-	215,845,000
Insurance Annuity Contract	-	-	658,000	658,000
Limited Partnership	-	-	24,562,000	24,562,000
Equity securities — U.S. Companies	275,830,000	2,116,000	-	277,946,000
U.S. Treasury securities	14,414,000	-	-	14,414,000
Corporate bonds ^(B)	-	122,622,000	-	122,622,000
Mortgage-backed securities	-	37,831,000	-	37,831,000
Total	\$ 322,088,000	\$ 378,452,000	\$ 25,220,000	\$ 725,760,000

^(A) Includes pension master trust's interest in PIMCO Stock Plus Limited Partnership, a commingled fund representing the pension core equity allocation and bench marked against the S&P 500 of \$147,209,000 and master trust's holding in Capital Guardian Non US Equity Fund, a commingled trust representing the pension's international equity allocation \$68,636,000.

^(B) Corporate bonds include fixed-income securities in separately managed portfolios. The diversified fixed income mandated is targeted at 11.25% of pension assets and is managed by Western. Loomis Sayles manages a high yield fixed-income portfolio targeted at 13.1% of pension assets.

The fair values of the Company's retirement income plan assets by asset category as of September 30, 2009 are as follows:

	Fair Value Measurements Using			Total
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
Cash equivalents	\$ 30,144,000	\$ -	\$ -	\$ 30,144,000
Commingled Pension Trust ^(A)	-	217,550,000	-	217,550,000
Insurance Annuity Contract	765,000	-	-	765,000
Limited Partnership	-	-	16,871,000	16,871,000
Equity securities — U.S. Companies	253,479,000	472,000	46,000	253,997,000
U.S. Treasury securities	-	16,935,000	-	16,935,000
Corporate bonds ^(B)	7,429,000	130,170,000	4,189,000	141,788,000
Mortgage-backed securities	-	49,191,000	-	49,191,000
Total	\$ 291,817,000	\$ 414,318,000	\$ 21,106,000	\$ 727,241,000

^(A) Includes pension master trust's interest in PIMCO Stock Plus Limited Partnership, a commingled fund representing the pension core equity allocation and bench marked against the S&P 500 of \$143,175,000 and master trust's holding in Capital Guardian Non US Equity Fund, a commingled trust representing the pension's international equity allocation \$74,374,000.

^(B) Corporate bonds include fixed-income securities in separately managed portfolios. The diversified fixed income mandated is targeted at 12.5% of pension assets and is managed by Western. Loomis Sayles manages a high yield fixed-income portfolio targeted at 12.5% of pension assets.

The following table presents the Company's assets measured at fair value on a recurring basis using significant unobservable inputs (Level 3) for 2010 and 2009:

	Fair Value Measurements Using Significant Unobservable Inputs (Level 3)			
	Equities	Private Equity Funds	Bonds/Other	Total
Beginning balance at September 30, 2008	<u>\$ -</u>	<u>\$ 17,799,317</u>	<u>\$ 4,795,631</u>	<u>\$ 22,594,947</u>
Actual return on plan assets:				
Relating to assets still held at the reporting date	(346,286)	(3,839,220)	1,555,864	(2,629,642)
Relating to assets sold during the period	281,297	-	(1,002,970)	(721,673)
Purchases, sales, and settlements	192,058	2,909,970	(3,103,968)	(1,940)
Transfers in and/or out of Level 3	<u>(80,509)</u>	<u>-</u>	<u>1,944,830</u>	<u>1,864,321</u>
Ending balance at September 30, 2009	<u>\$ 46,559</u>	<u>\$ 16,870,066</u>	<u>\$ 4,189,388</u>	<u>\$ 21,106,013</u>
Actual return on plan assets:				
Relating to assets still held at the reporting date	-	2,413,526	-	2,413,526
Relating to assets sold during the period	29,234	-	902,882	932,116
Purchases, sales, and settlements	(75,793)	5,277,969	(2,891,721)	2,310,455
Transfers in and/or out of Level 3	<u>-</u>	<u>-</u>	<u>(1,542,510)</u>	<u>(1,542,510)</u>
Ending balance at September 30, 2010	<u>\$ -</u>	<u>\$ 24,561,561</u>	<u>\$ 658,039</u>	<u>\$ 25,219,600</u>

13) At December 31, 2010, the gross benefit payments expected to be paid and Medicare Part D subsidies anticipated to be received by the Company are as follows:

Years Ending December 31	Pension Benefits	Postretirement Benefits	
	Future Benefit Payments	Future Benefit Payments	Anticipated Future Subsidies
2011	\$ 59,690,000	\$ 41,800,000	\$ 1,920,000
2012	52,120,000	41,590,000	2,260,000
2013	62,250,000	44,010,000	2,590,000
2014	69,700,000	46,650,000	2,970,000
2015	78,740,000	49,240,000	3,360,000
2016 through 2019	<u>466,260,000</u>	<u>283,360,000</u>	<u>23,870,000</u>
Total	<u>\$ 788,760,000</u>	<u>\$ 506,650,000</u>	<u>\$ 36,970,000</u>

14) The Company contributed \$7,477,000 in 2010 and \$70,955,000 in 2009 to its defined benefit pension plans. As of December 31, 2010, the Corporation expects to contribute \$76,000,000 to its defined benefit pension plans in 2011.

B. Defined Contribution Plans

Defined Contribution Plan - All employees of the Company who have attained the age of 21 years and have completed three months of continuous service are automatically enrolled in one of the two employee savings plans, which are qualified under Section 401(k) of the Internal Revenue Code. For both non-represented and represented employees, the Company matches 50% of employee contributions up to 10% of biweekly adjusted W-2 wages for employees with one year of continuous service. The Internal Revenue Service (IRS) limit on elective employee deferrals was \$16,500,000 for 2010 and 2009, respectively (in dollars). The IRS allowed catch-up contributions for employees who are age 50 or older as of December 31 in the amount of \$5,500,000 for 2010 and 2009, respectively (in dollars). The Company's expense for matching contributions totaled approximately \$13,666,000 and \$14,055,000 for 2010 and 2009, respectively.

Nonqualified Plans - Retirement benefits are provided for a group of key employees under nonqualified defined benefit pension plans. The general purpose of the plans is to provide additional retirement benefits to participants who are subject to the contribution and benefit limitations contained in the Internal Revenue Code. Benefits under the plans are unfunded and paid out of the general assets of the Company. The accumulated benefit obligation for these plans, was \$31,279,000 and \$29,108,000 at September 30, 2010 and 2009, respectively.

C. Multi-employer Plans – NOT APPLICABLE

D. Consolidated/Holding Company Plans – NOT APPLICABLE

E. Post-employment Benefits and Compensated Absences – NOT APPLICABLE

F. Impact of Modernization Act on Postretirement Benefits

Under the Medicare Modernization Act of 2003, the government provides tax-exempt federal subsidies to employers that provide prescription drug coverage to retirees that are actuarially equivalent to the benefits available under the Medicare Part D program. As a component of the Patient Protection and Affordable Care Act, this subsidy will no longer

be tax exempt effective for tax years beginning after December 31, 2010. Employers receiving the subsidies will no longer be able to deduct the full amount paid for coverage provided to retirees while receiving the subsidy; but instead, only the net cost will be deducted. Although the changes don't go into effect until 2011, the Corporation recorded in 2010 a \$4,870,875 charge to tax expense to reflect the loss of the future deferred tax asset.

13. CAPITAL AND SURPLUS, SHAREHOLDERS' DIVIDEND RESTRICTIONS AND QUASI-REORGANIZATIONS.

- A. Under the provisions of P.A. 350, the Company must maintain adequate subscriber reserves to comply with Section 403 of the Michigan Insurance Code, which requires authorized insurers to be safe, reliable and entitled to public confidence. As a result, the Company is required to file with OFIR, on an annual basis, its risk-based capital ("RBC") calculation based on the National Association of Insurance Commissioners ("NAIC") model. P.A. 350 requires the Company to maintain a RBC ratio of at least 200% but not to exceed 1,000% of subscriber reserves. In addition, under the terms of the Company's license agreement with the Blue Cross Blue Shield Association ("BCBSA", if the Company's RBC ratio is between 375% and 200%, it is subject to financial monitoring. If the Company's RBC ratio falls below 200%, the license agreement with BCBSA is subject to termination. At December 31, 2010 and 2009, the Company was in compliance with both the OFIR and BCBSA RBC requirements.
- B. BCBSM has no preferred stock outstanding.
- C. Under the provisions of P.A. 350, the Company is deemed a charitable and benevolent institution whose primary purpose is to promote the distribution of healthcare services for all Michigan residents. As such, the Company has no investors or contributed capital.
- D. Dividend payment restriction – NOT APPLICABLE
- E. Surplus Restriction – NOT APPLICABLE
- F. The total amount of advances to surplus not repaid – NOT APPLICABLE
- G. The amount of stock held by BCBSM for special purposes – NOT APPLICABLE
- H. Special surplus funds changes – NOT APPLICABLE
- I. The portion of unassigned funds (surplus) represented or reduced by each item below:

a. Unrealized gains and losses	\$	124,884,968
b. Nonadmitted asset values	\$	46,714,571
c. Provision for reinsurance	\$	-
- J. Surplus debentures of similar obligations – NOT APPLICABLE
- K. Impact of any restatement due to quasi-reorganization – NOT APPLICABLE
- L. Effective dates of all quasi-reorganizations in the prior 10 years – NOT APPLICABLE

14. CONTINGENCIES

- A. Contingent Commitments – NOT APPLICABLE
- B. Assessments – NOT APPLICABLE
- C. Gain Contingencies – NOT APPLICABLE
- D. Claims Related Extra Contractual Obligation Lawsuits – NOT APPLICABLE
- E. All Other Contingencies

Hospital Contracts- On October 18, 2010 the U.S. Department of Justice filed a lawsuit against the Company seeking to restrict its ability to provide the most deeply discounted rates from Michigan hospitals alleging that the use of most favored nation provisions in hospital contracts restricts marketplace competition. The Department of Justice is seeking injunctive relief that would prevent the Company from using similar language in any of our current or future contracts with providers. The lawsuit is not seeking financial damages. Four civil class action lawsuits alleging the same legal arguments as the U.S. Department of Justice lawsuit have also been filed seeking injunctive and monetary relief. At this time, the amount of damages being sought in the civil matters is unknown. The Company believes that these lawsuits are without merit and will vigorously defend its ability to negotiate the deepest possible discounts for its members and customers with Michigan hospitals. As these lawsuits are in the early stages of development, it is not yet possible to make an assessment regarding probability of an adverse outcome, nor estimate a range of potential loss.

Customer Disputes- The Company is currently involved in two types of legal issues with self-funded customers. The first involves lawsuits filed by several local government groups that allege the Company charged the groups provider network and other fees without their knowledge. The groups allege breach of contract and fiduciary duty. In the fourth quarter of 2010, two adverse jury verdicts were issued on this matter finding that the Company breached its contract with the groups. The Company believes it has meritorious defenses and has appealed these decisions. In light of the recent decisions the Company has established an appropriate accrual for further potential adverse outcomes. Due to the specific facts of each lawsuit, it is reasonably possible that the risk of loss could exceed the amount accrued. The second matter involves a potential class action dispute regarding whether the Company breached its fiduciary duty when it charged self-funded groups a subsidy that benefits the Company's senior citizens. The status of the class action is pending a decision at the 6th Circuit Court of Appeals. The probability of an adverse outcome on this matter is unknown and the Company is unable to quantify a range of loss on this matter.

Accident Fund- In 2007 the Company made a \$125,000 capital contribution to the Accident Fund to ensure that the subsidiary maintained its financial rating and competitive position in the marketplace. The Michigan Attorney General filed a lawsuit that the capital contribution violated PA 350 which prohibits the Company from subsidizing the Accident Fund. The trial court deferred this issue to the Michigan Insurance Commissioner who ruled that the capital contribution was permissible, but in December 2010, the Michigan Court of Appeals ruled that the Commissioner lacked the authority to rule on this issue and remanded the matter back to the trial court where the matter is pending a decision. The Company believes it has meritorious defenses in this matter and has determined that the risk of an adverse outcome in the matter is reasonably possible. In the event of an adverse outcome on this matter, management has at its disposal, other available financing vehicles to restructure this transaction.

The Company is a defendant in numerous lawsuits and involved in other matters arising in the normal course of business primarily related to subscribers' benefits, breach of contracts, provider reimbursement issues and provider participation arrangements. The Company vigorously defends these matters and while the ultimate outcome of these lawsuits are not final the Company's management as of December 31, 2010, estimates that these matters will be resolved without a material adverse effect on the Company's future financial position or results of operations.

15. LEASES

The Company has entered into various sale-leaseback transactions as of December 31, 2010 and 2009, as follows:

	December 31, 2010	December 31, 2009
RBS Asset Finance Inc. (RBS Asset) — 4.73% — maturity — 2013	\$ 29,223,766	\$ 38,944,479
RBS Asset — 3.46% — maturity — 2013	16,074,644	21,223,464
RBS Asset — 4.65% — maturity — 2014	19,386,746	24,011,567
Banc of America Leasing & Capital, LLC — 4.75% — maturity — 2013	47,144,466	61,354,947
Banc of America Leasing & Capital, LLC — 4.75% — maturity — 2014	7,818,464	9,592,690
Banc of America BK Leumi — 4.79% — maturity — 2015	7,794,549	-
Banc of America MB Bank — 4.86% — maturity — 2015	8,777,046	-
Banc of America BK Leumi — 4.86% — maturity — 2015	3,014,486	-
Banc of America Leasing & Capital, LLC — 3.60% — maturity — 2013	5,348,990	-
Fifth Third Bank — 5.15% — maturity — 2014	14,385,643	17,776,176
Siemens Financial, Inc. — 5.95% — maturity — 2014	<u>11,656,455</u>	<u>14,350,987</u>
Total	<u>\$ 170,625,255</u>	<u>\$ 187,254,310</u>

For all sale-leaseback transactions, the sales price of the asset was equal to the net book value, therefore no gains or losses were recognized. The initial term for all sale-leaseback transactions are sixty months and monthly payments are based on a five-year amortization period with a one dollar purchase options to be made at the end of the term of the lease, or within 15 days thereafter.

For all sale-leaseback agreements, the Company is required to maintain letters of credit to collateralize the transaction. All letters of credit are with Federal Home Loan Bank of Indianapolis (FHLBI). There were no outstanding borrowings against any letters of credit as of December 31, 2010 and 2009. The table below summarizes outstanding letters of credit related to the sale-leasebacks:

Description	Expiration Date	% of Financed Amount	Outstanding Amount
Banc of America Leasing & Capital, LLC	2013	105	\$ 63,569,278
RBS Asset	2014	100	51,378,698
RBS Asset	2014	100	21,601,308
Fifth Third Bank	2014	110	15,828,092
Siemens Financial, Inc	2014	110	12,821,291
Bank of Leumi	2014	100	3,019,212
MB Bank	2014	100	5,767,537
Bank of Leumi	2015	105	12,118,286
MB Bank	2,015	105	9,838,092

The sale-leaseback transactions have been accounted for under SSAP No. 22, *Leases*, which requires a sale of equipment that is accompanied by a leaseback of all or part of the equipment be accounted for as an operating lease. The rent expense incurred for the years ended December 31, 2010 and 2009, related to the sale-leaseback transactions, was \$54,307,795 and \$37,630,580, respectively.

Future minimum lease payments as of December 31, 2010, in connection with the sale-leaseback transactions are as follows:

Years Ending December 31	
2011	\$ 56,943,460
2012	56,943,460
2013	52,501,235
2014	17,072,354
2015	<u>1,515,397</u>
Total	<u>\$ 184,975,906</u>

In December 2010, the Company entered into a long-term lease to occupy space in the GM Renaissance Center in downtown Detroit. In addition, the Company leases certain computer equipment and office space under various non-cancelable operating leases. Rental expense was \$8,145,980 and \$7,607,370 for 2010 and 2009, respectively. As of December 31, 2010, future minimum lease payments, which include the GM Renaissance Center lease, are as follows:

Years Ending December 31	
2011	\$ 8,889,111
2012	10,556,159
2013	11,187,755
2014	8,942,873
2015	8,111,962
2016 and thereafter	<u>62,200,016</u>
Total	<u>\$ 109,887,876</u>

16. INFORMATION ABOUT FINANCIAL INSTRUMENTS WITH OFF-BALANCE SHEET RISK AND FINANCIAL INSTRUMENTS WITH CONCENTRATIONS OF CREDIT RISK – NOT APPLICABLE

17. SALE, TRANSFER AND SERVICING OF FINANCIAL ASSETS AND EXTINGUISHMENTS OF LIABILITIES

The Company, in the normal course of business, enters into security lending agreements with a custodian bank. Under this agreement, the Company maintains a policy with the custodian bank to lend equity and bond securities in exchange for collateral consisting primarily of cash or U.S. government-backed securities, approximating at least 102% of the value of the securities loaned. The policy adheres to quality, duration, and counter-party risk of various securities loaned. The custodian indemnifies all non-cash risks. The collateral is marked to market on a daily basis. Cash collateral is invested by the custodian bank in commingled trusts. The security lending agreements are primarily overnight in nature and subject to renewal or termination. If the agreement is terminated, the securities are returned to the Company. At December 31, 2010 and 2009, the Company loaned securities with a fair value of \$446,578,042 and \$230,562,339, respectively, with corresponding cash collateral of \$417,738,094 and \$236,438,072, respectively and non-cash collateral of \$38,035,382 and \$497,357, respectively.

18. GAIN OR LOSS TO THE REPORTING ENTITY FROM UNINSURED PLANS AND THE UNINSURED PORTION OF PARTIALLY INSURED PLANS

A. ASO Plans – NOT APPLICABLE

B. ASC Plans - The loss from operations of administrative service contracts (ASC) uninsured plans and the uninsured portion of partially insured plans (ASC plans with stop loss coverage) for the period ended December 31, 2010, are as follows:

	<u>ASC Plans without StopLoss</u>	<u>ASC Plans With StopLoss</u>	<u>Total</u>
Gross reimbursement for medical cost incurred	\$ 2,785,631,516	\$ 6,060,047,445	\$ 8,845,678,961
Gross administrative fees accrued	219,611,498	493,954,756	713,566,254
Gross expenses incurred (claims and administrative)	<u>3,000,496,557</u>	<u>6,564,223,826</u>	<u>9,564,720,384</u>
Total net gain (loss) from operations	<u>\$ 4,746,457</u>	<u>\$ (10,221,626)</u>	<u>\$ (5,475,169)</u>

Net Underwriting Gain(Loss)	<u>Insured</u>	<u>ASC</u>	<u>Total</u>
Premiums fees and reimbursements	<u>\$ 6,574,692,435</u>	<u>\$ 9,559,245,215</u>	<u>\$ 16,133,937,650</u>
Claims Incurred	5,793,567,136	8,845,678,961	14,639,246,097
Administrative Expenses	<u>806,811,104</u>	<u>719,041,423</u>	<u>1,525,852,527</u>
Total Operating Expenses	6,600,378,240	9,564,720,384	16,165,098,624
Underwriting Loss before PDR	(25,685,805)	(5,475,169)	(31,160,974)
Premium Deficiency Reserve	<u>(42,794,000)</u>	<u>-</u>	<u>(42,794,000)</u>
Underwriting Loss After PDR	<u>\$ (68,479,805)</u>	<u>\$ (5,475,169)</u>	<u>\$ (73,954,974)</u>

The (loss) gain from operations of administrative service contracts (ASC) uninsured plans and the uninsured portion of partially insured plans for the period ended December 31, 2009, are as follows:

	ASC Plans without Stoploss	ASC Plans with Stoploss	Total
Gross reimbursement for medical cost incurred	\$ 5,609,948,086	\$ 5,168,285,914	\$ 10,778,234,000
Gross administrative fees accrued	344,219,355	427,402,646	771,622,001
Gross expenses incurred (claims and administrative)	<u>5,953,541,079</u>	<u>5,634,622,830</u>	<u>11,588,163,909</u>
Total net gain (loss) from operations	<u>\$ 626,362</u>	<u>\$ (38,934,271)</u>	<u>\$ (38,307,909)</u>

	Insured	ASC	Total
Premium fees and reimbursements	<u>\$ 6,986,394,019</u>	<u>\$ 11,549,856,000</u>	<u>\$ 18,536,250,019</u>
Claims incurred	6,395,751,497	10,778,234,000	17,173,985,497
Administrative expenses	<u>796,718,341</u>	<u>809,929,909</u>	<u>1,606,648,251</u>
Total operating expenses	<u>7,192,469,839</u>	<u>11,588,163,909</u>	<u>18,780,633,748</u>
Underwriting loss before PDR	\$ (206,075,819)	\$ (38,307,909)	\$ (244,383,729)
Premium Deficiency Reserve	<u>(12,117,338)</u>	<u>-</u>	<u>(12,117,338)</u>
Underwriting loss after PDR	<u>\$ (218,193,158)</u>	<u>\$ (38,307,909)</u>	<u>\$ (256,501,066)</u>

C. Medicare or Similarly Structured Cost Based Reimbursement Contract – NOT APPLICABLE

19. DIRECT PREMIUM WRITTEN/PRODUCED BY MANAGING GENERAL AGENTS/THIRD PARTY ADMINISTRATORS - NOT APPLICABLE

20. FAIR VALUE MEASUREMENTS

The Company determines fair values by applying the following guidelines. If available, the Company uses market prices in active markets for identical assets and classifies these assets as Level 1. When market prices for similar financial instruments in an active market are not available, the Company estimates fair value based on pricing models using matrix pricing or price discovery and classifies these assets as Level 2. In situations where there is little or no market activity for same or similar financial instruments, the Company estimates fair value using its own assumptions about future cash flows and appropriate risk-adjusted discount rates and classifies these assets as Level 3.

The following table summarizes the Company's assets recorded at fair value that are measured on a recurring basis at December 31, 2010.

	Fair Value Measurements Using			Total Fair Value
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Lack of Observable Inputs (Level 3)	
Common stock - non-affiliates	\$ 708,441,000	\$ -	\$ -	\$ 708,441,000

The following table presents our assets measured at fair value on a recurring basis using significant unobservable inputs (Level 3) as of December 31, 2010:

Fair Value Measurements Using Significant Unobservable Inputs (Level 3)		
	2010	2009
Balance at January 1	\$ 16,827,000	\$ -
Total gains or losses (realized/unrealized):		
Included in earnings	(3,587,000)	(12,673,000)
Included in other comprehensive income	177,000	225,000
Purchases, issuances, and settlements	(4,350,000)	-
Transfers in and/or out of Level 3	-	29,275,000
Other ⁽¹⁾	(9,067,000)	-
Balance at December 31	\$ -	\$ 16,827,000
The amount of total gains or losses for the period included in earnings (or changes in net assets) attributable to the change in unrealized gains or losses relating to assets still held at December 31	\$ (3,410,000)	\$ 12,673,000

⁽¹⁾At December 31, 2010, the collateralized debt obligations are valued at adjusted carrying value and therefore not reported as Level 3 assets.

21. OTHER ITEMS

- A. Extraordinary Items – NOT APPLICABLE
- B. Troubled Debt Restructuring – NOT APPLICABLE
- C. Other Disclosures:

Blue Cross Blue Shield Association ("BCBSA") Deposit - As part of its Blue Cross Blue Shield Association ("BCBSA") license requirements, the Company is required to maintain a custodial bank account to assure the payment of claims in the event of the

Company's insolvency. The account balance is calculated as a percentage of the Company's unpaid claim liability and consists primarily of marketable securities. The funds in the account are included in the Company's investment portfolio. The Company has the ability to trade and transfer securities within the account as long as the balance in the account is at or above the required minimum. The required balance for the period April 1, 2010 through March 31, 2011, is \$143,800,000. At December 31, 2010, the balance in this custodial account was \$164,796,574.

National Health Care Reform - In March 2010 the Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation of 2010 was enacted. The new law which will take effect over a four-year period, includes prohibiting health insurers from denying coverage or refusing claims based on pre-existing conditions, expanding Medicaid eligibility, subsidizing insurance premiums, providing incentives for businesses to provide health care benefits, establishing health insurance exchanges, and support for medical research.

The new law encompasses certain new taxes and fees, including an excise tax on high premium insurance policies, limitations on the amount of compensation that is tax deductible and new fees on companies in the industry which are not deductible for income tax purposes. The PPACA also imposes guaranteed coverage requirements, prohibitions on some annual and all lifetime limits, increased restrictions on rescinding coverage, establishment of minimum medical loss ratio (MLR) requirement, the establishment of state insurance exchanges and essential benefit packages. Additionally, the legislation reduces the reimbursement levels for health plans participating in the Medicare Advantage program over time.

The following health related provisions of the PPACA became effective in 2010. These changes did not have a significant impact to the Corporation consolidated financial position or results of operations for period ending December 31, 2010.

- Adults with pre-existing condition will be eligible to join a temporary high-risk pool, which will be superseded by the health care exchange in 2014.
- Prohibition of insurance companies from imposing lifetime dollar limits on essential benefits, like hospital stay in new policies issued.
- Permission for dependent children to remain on their parents' insurance plan until their 26th birthday, regardless of status.
- Prohibition of insurers from excluding pre-existing medical conditions (except in grandfathered individual health insurance plans) for children under the age of 19.

Many of the details of the new legislation, including but not limited to, the medical loss ratio requirements, are still subject to additional guidance and specificity by the Department of Health and Human Services (HHS) and the National Association of Insurance Commissioners (NAIC). The establishment of minimum MLR, which could have a significant impact to the Corporation's results of operations, will take effect for certain business segments beginning in January 2011. The Corporation is required to calculate MLR and meet certain threshold standards. Failure to meet established thresholds will require the Company to pay customer rebates and/or lose its privileges associated with preferential tax status as a nonprofit Blue Cross plan.

Other significant changes, including the annual fees on health insurance companies, the excise tax on premium insurance policies, the guaranteed coverage requirements and the requirement that individuals obtain coverage, do not become effective until 2014 or later.

These changes could have a material adverse effect on the Corporation's business, cash flows, financial condition and results of operations.

D. Uncollectible Assets on Uninsured plans

At December 31, 2010 and 2009, the Company had admitted assets of \$111,894,321 and \$320,330,382, respectively in accounts receivable for uninsured plans. The Company regularly assesses the collectability of these receivables. At December 31, 2010, approximately 20 percent of the balance may be uncollectible and are nonadmitted.

E. Business Interruption Insurance Recoveries – NOT APPLICABLE

F. State Transferable Tax Credits - NOT APPLICABLE

G. Subprime Mortgage Related Risk Exposure – NOT APPLICABLE

22. EVENTS SUBSEQUENT

Management has evaluated all events subsequent to the balance sheet date of December 31, 2010 through the date of this filing and has determined that there are no subsequent events that require disclosure under SSAP No. 9, *Subsequent Events*.

23. REINSURANCE

A. Ceded Reinsurance Report

Section 1 – General Interrogatories

- 1) Are any of the reinsurers, listed in Schedule S as non-affiliated, owned in excess of 10% or controlled, either directly or indirectly, by the company or by any representative, officer, trustee, or director of the company?

Yes () No (X)

If yes, give full details.

- 2) Have any policies issued by the company been reinsured with a company chartered in a country other than the United States (excluding U.S. Branches of such companies) that is owned in excess of 10% or controlled directly or indirectly by an insured, a beneficiary, a creditor or any other person not primarily engaged in the insurance business?

Yes () No (X)

Section 2 – Ceded Reinsurance Report – Part A

- 1) Does the company have any reinsurance agreements in effect under which the reinsurer may unilaterally cancel any reinsurance for reasons other than for nonpayment of premium or other similar credit?

Yes () No (X)

- a. If yes, what is the estimated amount of the aggregate reduction in surplus of a unilateral cancellation by the reinsurer as of the date of this statement, for those agreements in which cancellation results in a net obligation of the reporting entity to the reinsurer, and for which such obligation is not presently accrued? Where

necessary, the reporting entity may consider the current or anticipated experience of the business reinsured in making this estimate \$_____.

b. What is the total amount of reinsurance credits taken, whether as an asset or as a reduction of liability for these agreements in this statement? \$ 0.

2) Does the reporting entity have any reinsurance agreements in effect such that the amount of losses paid or accrued through the statement date may result in a payment to the reinsurer of amounts that, in aggregate and allowing for offset of mutual credits from other reinsurance agreements with the same reinsurer, exceed the total direct premium collected under the reinsured policies?

Yes () No (X)

If yes, give full details.

Section 3 – Ceded Reinsurance Report – Part B

1) What is the estimated amount of the aggregate reduction in surplus, (for agreements other than those under which the reinsurer may unilaterally cancel for reasons other than for nonpayment of premium or other similar credits that are reflected in Section 2 above) of termination of ALL reinsurance agreements, by either party, as of the date of this statement? Where necessary, the company may consider the current or anticipated experience of the business reinsured in making this estimate \$ 0.

2) Have any new agreements been executed or existing agreements amended, since January 1 of the year of this statement, to include policies or contracts that were in force or which had existing reserves established by the company as of the effective date of the agreement?

Yes () No (X)

If yes, what is the amount of reinsurance credits, whether an asset or a reduction of a liability, taken for such new agreements or amendments?
\$_____.

B. Uncollectible Reinsurance – None

C. Commutation of Ceded Reinsurance - None

24. RETROSPECTIVELY RATED CONTRACTS AND CONTRACTS SUBJECT TO REDETERMINATION

A. The company establishes a liability for experience rated group contracts and portions of Medicare Part D prescription drug contracts as a result of favorable experience based on an actuarial estimate of underwriting gains which will be returned to customers, either as cash refunds or future rate reductions. Liabilities for experience contracts were \$266,708,275 and \$296,555,650 at December 31, 2010 and 2009, respectively.

B. Under terms of most of the experience-rated contracts, recovery, if any, of underwriting losses through future rate increases is not recognized until received.

C. During 2010 and 2009, net premiums written that are subject to retrospective rating features were \$1,890,116,536 and \$2,048,930,138, respectively, which represents 28% of total net premiums written for both years. As of December 31, 2010 and 2009, there were no receivables for accrued retrospective premiums.

25. CHANGE IN INCURRED CLAIMS AND CLAIM ADJUSTMENT EXPENSES

This estimate is based upon historical claims experience modified for current trends and changes in benefit coverage, which could vary as the claims are ultimately settled. Processing expense related to claims is accrued based on an estimate of expenses to process such claims. Revisions in actuarial estimates are reported in the period in which they arise.

26. INTER-COMPANY POOLING ARRANGEMENTS – NOT APPLICABLE

27. STRUCTURED SETTLEMENTS – NOT APPLICABLE

28. HEALTH CARE RECEIVABLES

The Company receives pharmaceutical rebates from third-party pharmacy benefit managers. Rebate accruals are calculated using recent history of rebates received to develop an estimate. Activity for 2008–2010 is summarized as follows:

Quarter	Pharmacy Rebates as Reported on Financial Statements	Rebates as Billed or Otherwise Confirmed	Actual Rebates Received Within 90 Days of Billing	Received Within 91 to 180 Days of Billing	Received More Than 180 Days After Billing
December 31, 2010	\$ 31,022,000	\$ -	\$ -	\$ -	\$ -
September 30, 2010	30,925,000	31,317,000	-	-	-
June 30, 2010	29,740,000	30,837,000	30,837,000	-	-
March 31, 2010	29,740,000	29,041,000	29,041,000	-	-
December 31, 2009	26,981,000	37,809,000	37,809,000	-	-
September 30, 2009	26,396,000	43,786,000	43,786,000	-	-
June 30, 2009	26,305,000	40,668,000	40,668,000	-	-
March 31, 2009	23,714,000	43,947,000	43,947,000	-	-
December 31, 2008	36,082,000	41,615,000	41,615,000	-	-
September 30, 2008	22,847,000	46,204,000	46,204,000	-	-
June 30, 2008	25,681,000	40,886,000	40,693,000	-	193,000
March 31, 2008	25,055,000	33,095,000	33,068,000	-	27,000

29. PARTICIPATING POLICIES – NOT APPLICABLE

30. PREMIUM DEFICIENCY RESERVES

SSAP No. 54 requires companies to record a premium deficiency reserve when expected claim payments or incurred costs, claim adjustment expenses and administration costs exceed the premiums to be collected for the remainder of a contract period.

A state prescribed practice was issued by OFIR which limits the premium deficiency reserve for the company’s individual lines of business to no more than two years. At December 31, 2010 and 2009, if such limit was not in place, an additional liability of \$214,584,000 and \$248,500,000 respectively, would be recorded in the statutory statements.

Premium deficiency reserves at December 31, 2010 and 2009, consist of the following:

	Balance 1/1/2010	Additional Reserve	Amortization	Balance 12/31/2010
MiChild	\$ 10,429,000	\$ 14,325,000	\$ 14,166,000	\$ 10,588,000
Individual	83,930,000	82,287,000	45,180,000	121,037,000
Medicare Complementary	<u>265,194,000</u>	<u>149,027,000</u>	<u>143,499,000</u>	<u>270,722,000</u>
Total	\$ 359,553,000	\$ 245,639,000	\$ 202,845,000	\$ 402,347,000

	Balance 1/1/2009	Additional Reserve	Amortization	Balance 12/31/2009
MiChild	\$ 11,200,000	\$ 14,100,000	\$ 14,871,000	\$ 10,429,000
Individual	209,700,000	(21,958,000)	103,812,000	83,930,000
Medicare Complementary	<u>126,500,000</u>	<u>201,026,000</u>	<u>62,332,000</u>	<u>265,194,000</u>
Total	\$ 347,400,000	\$ 193,168,000	\$ 181,015,000	\$ 359,553,000

Projected Loss by Year	MiChild	Individual	Medicare Comp	Total
2011 year	\$ 10,588,000	\$ 49,445,000	\$ 147,164,000	\$ 205,704,000
2012 year	<u>-</u>	<u>71,592,000</u>	<u>123,558,000</u>	<u>196,643,000</u>
	\$ 10,588,000	\$ 121,037,000	\$ 270,722,000	\$ 402,347,000

The MiChild premium deficiency reserve (“PDR”) was established for the anticipated losses for the contract period in effect ending September 30, 2011 on the state sponsored insurance program, which provides health and dental benefits for uninsured children of Michigan’s working families. The outstanding receivable balances for excess losses were \$25,982,000 and \$28,834,000 as of December 31, 2010 and 2009, respectively.

The premium deficiency reserve for the Company’s individual business and the Medicare complimentary business were established for anticipated losses for the contract years 2011 through 2012, primarily due to expected future premium rate increases being insufficient to cover anticipated benefit trends. Generally, the policies under this program are guaranteed to be renewed at the rates approved by OFIR. As the insurer of last resort, it is required to provide insurance to individuals regardless of their health status. The premium is based on rates approved by OFIR.

31. ANTICIPATED SALVAGE AND SUBROGATION

Coordination of Benefit Recoveries	2010	2009
2006 Accident Year		3,994
2007 Accident Year	2,176	6,411
2008 Accident Year	(13,203)	3,001,008
2009 Accident Year	1,057,790	26,105,110
2010 Accident Year	9,025,482	

BLUE CROSS BLUE SHIELD OF MICHIGAN
GENERAL INTERROGATORIES

PART 1 - COMMON INTERROGATORIES

GENERAL

- 1.1 Is the reporting entity a member of an Insurance Holding Company System consisting of two or more affiliated persons, one or more of which is an insurer? Yes [X] No []
- 1.2 If yes, did the reporting entity register and file with its domiciliary State Insurance Commissioner, Director or Superintendent or with such regulatory official of the state of domicile of the principal insurer in the Holding Company System, a registration statement providing disclosure substantially similar to the standards adopted by the National Association of Insurance Commissioners (NAIC) in its Model Insurance Holding Company System Regulatory Act and model regulations pertaining thereto, or is the reporting entity subject to standards and disclosure requirements substantially similar to those required by such Act and regulations? Yes [X] No [] N/A []
- 1.3 State regulating? Michigan
- 2.1 Has any change been made during the year of this statement in the charter, by-laws, articles of incorporation, or deed of settlement of the reporting entity? Yes [] No [X]
- 2.2 If yes, date of change: _____
- 3.1 State as of what date the latest financial examination of the reporting entity was made or is being made. 12/31/2007
- 3.2 State the as of date that the latest financial examination report became available from either the state of domicile or the reporting entity. This date should be the date of the examined balance sheet and not the date the report was completed or released. 12/31/2007
- 3.3 State as of what date the latest financial examination report became available to other states or the public from either the state of domicile or the reporting entity. This is the release date or completion date of the examination report and not the date of the examination (balance sheet date). 04/30/2009
- 3.4 By what department or departments? Michigan Office of Financial and Insurance Regulation
- 3.5 Have all financial statement adjustments within the latest financial examination report been accounted for in a subsequent financial statement filed with departments? Yes [] No [] N/A [X]
- 3.6 Have all of the recommendations within the latest financial examination report been complied with? Yes [X] No [] N/A []
- 4.1 During the period covered by this statement, did any agent, broker, sales representative, non-affiliated sales/service organization or any combination thereof under common control (other than salaried employees of the reporting entity) receive credit or commissions for or control a substantial part (more than 20 percent of any major line of business measured on direct premiums) of:
- 4.11 sales of new business? Yes [] No [X]
- 4.12 renewals? Yes [] No [X]
- 4.2 During the period covered by this statement, did any sales/service organization owned in whole or in part by the reporting entity or an affiliate, receive credit or commissions for or control a substantial part (more than 20 percent of any major line of business measured on direct premiums) of:
- 4.21 sales of new business? Yes [] No [X]
- 4.22 renewals? Yes [] No [X]
- 5.1 Has the reporting entity been a party to a merger or consolidation during the period covered by this statement? Yes [] No [X]
- 5.2 If yes, provide the name of the entity, NAIC company code, and state of domicile (use two letter state abbreviation) for any entity that has ceased to exist as a result of the merger or consolidation.

1 Name of Entity	2 NAIC Co. Code	3 State of Domicile

- 6.1 Has the reporting entity had any Certificates of Authority, licenses or registrations (including corporate registration, if applicable) suspended or revoked by any governmental entity during the reporting period? Yes [] No [X]
- 6.2 If yes, give full information: _____

- 7.1 Does any foreign (non-United States) person or entity directly or indirectly control 10% or more of the reporting entity? Yes [] No [X]

- 7.2 If yes,%

- 7.21 State the percentage of foreign control
- 7.22 State the nationality(ies) of the foreign person(s) or entity(ies); or if the entity is a mutual or reciprocal, the nationality of its manager or attorney-in-fact and identify the type of entity(ies) (e.g., individual, corporation, government, manager or attorney-in-fact)

1 Nationality	2 Type of Entity

- 8.1 Is the company a subsidiary of a bank holding company regulated by the Federal Reserve Board? Yes [] No [X]
- 8.2 If response to 8.1 is yes, please identify the name of the bank holding company. _____

- 8.3 Is the company affiliated with one or more banks, thrifts or securities firms? Yes [] No [X]

- 8.4 If response to 8.3 is yes, please provide the names and locations (city and state of the main office) of any affiliates regulated by a federal financial regulatory services agency [i.e. the Federal Reserve Board (FRB), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC) and the Securities Exchange Commission (SEC)] and identify the affiliate's primary federal regulator.

1 Affiliate Name	2 Location (City, State)	3 FRB	4 OCC	5 OTS	6 FDIC	7 SEC

9. What is the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit?
Deloitte & Touche, Suite 900, 600 Renaissance Center, Detroit, Michigan 48243-1704

GENERAL INTERROGATORIES

PART 1 - COMMON INTERROGATORIES

- 10.1 Has the insurer been granted any exemptions to the prohibited non-audit services provided by the certified independent public accountant requirements as allowed in Section 7H of the Annual Financial Reporting Model Regulation (Model Audit Rule), or substantially similar state law or regulation? Yes [] No [X]
- 10.2 If the response to 10.1 is yes, provide information related to this exemption:

- 10.3 Has the insurer been granted any exemptions to the audit committee requirements as allowed in Section 14H of the Annual Financial Reporting Model Regulation, or substantially similar state law or regulation? Yes [] No [X]
- 10.4 If the response to 10.3 is yes, provide information related to this exemption:

- 10.5 Has the insurer been granted any exemptions related to the other requirements of the Annual Financial Reporting Model Regulation as allowed for in Section 17A of the Model Regulation, or substantially similar state law or regulation? Yes [] No [X]
- 10.6 If the response to 10.5 is yes, provide information related to this exemption:

- 10.7 Has the reporting entity established an Audit Committee in compliance with the domiciliary state insurance laws? Yes [X] No []
- 10.8 If the answer to 10.7 is no or n/a, please explain.

11. What is the name, address and affiliation (officer/employee of the reporting entity or actuary/consultant associated with an actuarial consulting firm) of the individual providing the statement of actuarial opinion/certification?
Dave Nelson FSA MAAA Vice President and Chief Actuary Blue Cross Blue Shield of Michigan, 600 E. Lafayette, MC 2010, Detroit, Michigan 48226
- 12.1 Does the reporting entity own any securities of a real estate holding company or otherwise hold real estate indirectly? Yes [] No [X]
- 12.11 Name of real estate holding company

- 12.12 Number of parcels involved
12.13 Total book/adjusted carrying value
- 12.2 If yes, provide explanation.

13. FOR UNITED STATES BRANCHES OF ALIEN REPORTING ENTITIES ONLY:
- 13.1 What changes have been made during the year in the United States manager or the United States trustees of the reporting entity?

- 13.2 Does this statement contain all business transacted for the reporting entity through its United States Branch on risks wherever located? Yes [] No []
- 13.3 Have there been any changes made to any of the trust indentures during the year? Yes [] No []
- 13.4 If answer to (13.3) is yes, has the domiciliary or entry state approved the changes? Yes [] No [] N/A []
- 14.1 Are the senior officers (principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions) of the reporting entity subject to a code of ethics, which includes the following standards?
a. Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
b. Full, fair, accurate, timely and understandable disclosure in the periodic reports required to be filed by the reporting entity;
c. Compliance with applicable governmental laws, rules and regulations;
d. The prompt internal reporting of violations to an appropriate person or persons identified in the code; and
e. Accountability for adherence to the code. Yes [X] No []
- 14.11 If the response to 14.1 is no, please explain:

- 14.2 Has the code of ethics for senior managers been amended? Yes [] No [X]
- 14.21 If the response to 14.2 is yes, provide information related to amendment(s).

- 14.3 Have any provisions of the code of ethics been waived for any of the specified officers? Yes [] No [X]
- 14.31 If the response to 14.3 is yes, provide the nature of any waiver(s).

BOARD OF DIRECTORS

15. Is the purchase or sale of all investments of the reporting entity passed upon either by the Board of Directors or a subordinate committee thereof? Yes [X] No []
16. Does the reporting entity keep a complete permanent record of the proceedings of its Board of Directors and all subordinate committees thereof? Yes [X] No []
17. Has the reporting entity an established procedure for disclosure to its Board of Directors or trustees of any material interest or affiliation on the part of any of its officers, directors, trustees or responsible employees that is in conflict or is likely to conflict with the official duties of such person? Yes [X] No []

FINANCIAL

18. Has this statement been prepared using a basis of accounting other than Statutory Accounting Principles (e.g., Generally Accepted Accounting Principles)? Yes [] No [X]
- 19.1 Total amount loaned during the year (inclusive of Separate Accounts, exclusive of policy loans):
- 19.11 To directors or other officers \$.....0
- 19.12 To stockholders not officers \$.....0
- 19.13 Trustees, supreme or grand (Fraternal only) \$.....0
- 19.2 Total amount of loans outstanding at the end of year (inclusive of Separate Accounts, exclusive of policy loans):
- 19.21 To directors or other officers \$.....0
- 19.22 To stockholders not officers \$.....0
- 19.23 Trustees, supreme or grand (Fraternal only) \$.....0

GENERAL INTERROGATORIES

PART 1 - COMMON INTERROGATORIES

- 20.1 Were any assets reported in this statement subject to a contractual obligation to transfer to another party without the liability for such obligation being reported in the statement? Yes [] No [X]
- 20.2 If yes, state the amount thereof at December 31 of the current year:
 - 20.21 Rented from others
 - 20.22 Borrowed from others
 - 20.23 Leased from others
 - 20.24 Other
- 21.1 Does this statement include payments for assessments as described in the Annual Statement Instructions other than guaranty fund or guaranty association assessments? Yes [] No [X]
- 21.2 If answer is yes:
 - 21.21 Amount paid as losses or risk adjustment
 - 21.22 Amount paid as expenses
 - 21.23 Other amounts paid
- 22.1 Does the reporting entity report any amounts due from parent, subsidiaries or affiliates on Page 2 of this statement? Yes [X] No []
- 22.2 If yes, indicate any amounts receivable from parent included in the Page 2 amount. \$.....0

INVESTMENT

- 23.1 Were all the stocks, bonds and other securities owned December 31 of current year, over which the reporting entity has exclusive control, in the actual possession of the reporting entity on said date (other than securities lending programs addressed in 23.3)? Yes [X] No []
- 23.2 If no, give full and complete information relating thereto.

23.3 For security lending programs, provide a description of the program including value for collateral and amount of loaned securities, and whether collateral is carried on or off-balance sheet (an alternative is to reference Note 17 where this information is also provided). Refer to Note 17

- 23.4 Does the company's security lending program meet the requirements for a conforming program as outlined in the Risk-Based Capital Instructions? Yes [X] No [] N/A []
- 23.5 If answer to 23.4 is yes, report amount of collateral for conforming programs. \$.....455,773,476
- 23.6 If answer to 23.4 is no, report amount of collateral for other programs.
- 23.7 Does your securities lending program require 102% (domestic securities) and 105% (foreign securities) from the counterparty at the outset of the contract? Yes [X] No [] N/A []
- 23.8 Does the reporting entity non-admit when the collateral received from the counterparty falls below 100%? Yes [X] No [] N/A []
- 23.9 Does the reporting entity or the reporting entity's securities lending agent utilize the Master Securities Lending Agreement (MSLA) to conduct securities lending? Yes [X] No [] N/A []

- 24.1 Were any of the stocks, bonds or other assets of the reporting entity owned at December 31 of the current year not exclusively under the control of the reporting entity, or has the reporting entity sold or transferred any assets subject to a put option contract that is currently in force? (Exclude securities subject to Interrogatory 20.1 and 23.3) Yes [] No [X]
- 24.2 If yes, state the amount thereof at December 31 of the current year:

- 24.21 Subject to repurchase agreements
- 24.22 Subject to reverse repurchase agreements
- 24.23 Subject to dollar repurchase agreements
- 24.24 Subject to reverse dollar repurchase agreements
- 24.25 Pledged as collateral
- 24.26 Placed under option agreements
- 24.27 Letter stock or securities restricted as to sale
- 24.28 On deposit with state or other regulatory body
- 24.29 Other

24.3 For category (24.27) provide the following:

1 Nature of Restriction	2 Description	3 Amount

- 25.1 Does the reporting entity have any hedging transactions reported on Schedule DB? Yes [] No [X]
- 25.2 If yes, has a comprehensive description of the hedging program been made available to the domiciliary state? Yes [] No [] N/A [X]
If no, attach a description with this statement.

- 26.1 Were any preferred stocks or bonds owned as of December 31 of the current year mandatorily convertible into equity, or, at the option of the issuer, convertible into equity? Yes [] No [X]
- 26.2 If yes, state the amount thereof at December 31 of the current year:

- 27. Excluding items in Schedule E-Part 3-Special Deposits, real estate, mortgage loans and investments held physically in the reporting entity's offices, vaults or safety deposit boxes, were all stocks, bonds and other securities, owned throughout the current year held pursuant to a custodial agreement with a qualified bank or trust company in accordance with Section 1, III - General Examination Considerations, F. Outsourcing of Critical Functions Custodial or Safekeeping Agreements of the NAIC Financial Condition Examiners Handbook? Yes [X] No []
- 27.01 For agreements that comply with the requirements of the NAIC Financial Condition Examiners Handbook, complete the following:

1 Name of Custodian(s)	2 Custodian's Address
State Street Bank & Trust	801 Pennsylvania, Kansas City, MO 64105
Federal Home Loan Bank of Indianapolis	8250 Woodfield Crossing, Indianapolis IN 46240
Fidelity Investments	100 Magellan Way, Covington, KY 41015

27.02 For all agreements that do not comply with the requirements of the NAIC Financial Condition Examiners Handbook, provide the name, location and a complete explanation:

1 Name(s)	2 Location(s)	3 Complete Explanation(s)

- 27.03 Have there been any changes, including name changes, in the custodian(s) identified in 27.01 during the current year? Yes [] No [X]

27.04 If yes, give full and complete information relating thereto:

1 Old Custodian	2 New Custodian	3 Date of Change	4 Reason

GENERAL INTERROGATORIES

PART 1 - COMMON INTERROGATORIES

27.05 Identify all investment advisors, brokers/dealers or individuals acting on behalf of broker/dealers that have access to the investment accounts, handle securities and have authority to make investments on behalf of the reporting entity:

1 Central Registration Depository Number(s)	2 Name	3 Address
105377	Loomis Sayles	One Financial Center, Boston, MA 02111
106810	Munder Capital Management	480 Pierce St, Birmingham, MI 48009-6059
108518	Snyder Capital Management, LP	One Market Plaza, Steuart Tower, Suite 1200, San Fran
110441	Western Asset Management Co	385 East Colorado Blvd, Pasadena, CA 91101
50584	Piedmont Investment Advisors, LLC	411 West Chapel Hill Street, Suite 1100, Durham, NC 2
113538	Herdon Capital	Herdon Plaza, 100 Auburn Ave, NE Atlanta, GA 30303

28.1 Does the reporting entity have any diversified mutual funds reported in Schedule D-Part 2 (diversified according to the Securities and Exchange Commission (SEC) in the Investment Company Act of 1940 [Section 5 (b) (1)])?

Yes [X] No []

28.2 If yes, complete the following schedule:

1 CUSIP #	2 Name of Mutual Fund	3 Book/Adj. Carrying Value
78462F 10 3	Spy Exchange Traded Funds	255,778,895
722005 62 6	PIMCO All Assets	14,978,791
28,2999. TOTAL		270,757,686

28.3 For each mutual fund listed in the table above, complete the following schedule:

1 Name of Mutual Fund (from the above table)	2 Name of Significant Holding of the Mutual Fund	3 Amount of Mutual Fund's Book/Adjusted Carrying Value Attributable to Holding	4 Date of Valuation
Spy Exchange Traded Funds	Exxon Mobil Corp	8,645,327	12/31/2010
PIMCO All Assets	None - Fund of Funds		12/31/2010

29. Provide the following information for all short-term and long-term bonds and all preferred stocks. Do not substitute amortized value or statement value for fair value.

	1 Statement (Admitted) Value	2 Fair Value	3 Excess of Statement over Fair Value (-), or Fair Value over Statement (+)
29.1 Bonds.....	3,177,967,127	3,306,089,276	128,122,149
29.2 Preferred stocks.....	1,900,362	2,274,412	374,050
29.3 Totals.....	3,179,867,489	3,308,363,688	128,496,199

29.4 Describe the sources or methods utilized in determining the fair values:

NAIC/SVO and Custodians

30.1 Was the rate used to calculate fair value determined by a broker or custodian for any of the securities in Schedule D?

Yes [X] No []

30.2 If the answer to 30.1 is yes, does the reporting entity have a copy of the broker's or custodian's pricing policy (hard copy or electronic copy) for all brokers or custodians used as a pricing source?

Yes [X] No []

30.3 If the answer to 30.2 is no, describe the reporting entity's process for determining a reliable pricing source for purposes of disclosure of fair value for Schedule D.

31.1 Have all the filing requirements of the Purposes and Procedures Manual of the NAIC Securities Valuation Office been followed?

Yes [X] No []

31.2 If no, list exceptions:

OTHER

32.1 Amount of payments to trade associations, service organizations and statistical or rating bureaus, if any?

\$.....7,065,480

32.2 List the name of the organization and the amount paid if any such payment represented 25% or more of the total payments to trade associations, service organizations and statistical or rating bureaus during the period covered by this statement.

1 Name	2 Amount Paid
Blue Cross Blue Shield Association	6,948,965

33.1 Amount of payments for legal expenses, if any?

\$.....34,164,262

33.2 List the name of the firm and the amount paid if any such payment represented 25% or more of the total payments for legal expenses during the period covered by this statement.

1 Name	2 Amount Paid
-----------	------------------

34.1 Amount of payments for expenditures in connection with matters before legislative bodies, officers or departments of government, if any?

\$.....259,378

34.2 List the name of the firm and the amount paid if any such payment represented 25% or more of the total payment expenditures in connection with matters before legislative bodies, officers or departments of government during the period covered by this statement.

1 Name	2 Amount Paid
-----------	------------------

BLUE CROSS BLUE SHIELD OF MICHIGAN
GENERAL INTERROGATORIES (continued)

PART 2 - HEALTH INTERROGATORIES

- 1.1 Does the reporting entity have any direct Medicare Supplement Insurance in force? Yes No
- 1.2 If yes, indicate premium earned on U.S. business only \$.....277,850,385
- 1.3 What portion of Item (1.2) is not reported on the Medicare Supplement Insurance Experience Exhibit? \$.....0
- 1.31 Reason for excluding

- 1.4 Indicate amount of earned premium attributable to Canadian and/or Other Alien not included in Item (1.2) above. \$.....0
- 1.5 Indicate total incurred claims on all Medicare Supplement insurance. \$.....431,867,831

- 1.6 Individual policies:
 Most current three years:
 1.61 Total premium earned \$.....277,850,385
 1.62 Total incurred claims \$.....431,867,831
 1.63 Number of covered lives212,737
 All years prior to most current three years:
 1.64 Total premium earned \$.....0
 1.65 Total incurred claims \$.....0
 1.66 Number of covered lives0

- 1.7 Group policies:
 Most current three years:
 1.71 Total premium earned \$.....0
 1.72 Total incurred claims \$.....0
 1.73 Number of covered lives0
 All years prior to most current three years:
 1.74 Total premium earned \$.....0
 1.75 Total incurred claims \$.....0
 1.76 Number of covered lives0

2. Health test:

	1 Current Year	2 Prior Year
2.1 Premium Numerator.....	6,558,172,279	6,855,338,281
2.2 Premium Denominator.....	6,558,172,279	6,855,338,281
2.3 Premium Ratio (2.1/2.2).....	100.0	100.0
2.4 Reserve Numerator.....	1,512,843,921	1,565,989,226
2.5 Reserve Denominator.....	1,512,843,921	1,565,989,226
2.6 Reserve Ratio (2.4/2.5).....	100.0	100.0

- 3.1 Has the reporting entity received any endowment or gift from contracting hospitals, physicians, dentists, or others that is agreed will be returned when, and if the earnings of the reporting entity permits? Yes No
- 3.2 If yes, give particulars:

- 4.1 Have copies of all agreements stating the period and nature of hospitals', physicians', and dentists' care offered to subscribers and dependents been filed with the appropriate regulatory agency? Yes No
- 4.2 If not previously filed, furnish herewith a copy(ies) of such agreement(s). Do these agreements include additional benefits offered? Yes No
- 5.1 Does the reporting entity have stop-loss reinsurance? Yes No

5.2 If no, explain:

Blue Cross Blue Shield of Michigan does not utilize stop-loss reinsurance due to the size and stability of the business and sufficient levels of capitalization

- 5.3 Maximum retained risk (see instructions):
 5.31 Comprehensive medical \$.....0
 5.32 Medical only \$.....0
 5.33 Medicare supplement \$.....0
 5.34 Dental and vision \$.....0
 5.35 Other limited benefit plan \$.....0
 5.36 Other \$.....0

- 6. Describe arrangement which the reporting entity may have to protect subscribers and their dependents against the risk of insolvency including hold harmless provisions, conversion privileges with other carriers, agreements with providers to continue rendering services, and any other agreements:
Maintain a restricted custodial bank account determined on the basis of a formula set by BCBSA and continuation insurance coverage with Collins and Associates.

- 7.1 Does the reporting entity set up its claim liability for provider services on a service date base? Yes No
- 7.2 If no, give details:
Claim Liabilities are based on paid/incurred claims triangulation

- 8. Provide the following information regarding participating providers:
 8.1 Number of providers at start of reporting year43,840
 8.2 Number of providers at end of reporting year45,462

- 9.1 Does the reporting entity have business subject to premium rate guarantees? Yes No
- 9.2 If yes, direct premium earned:
 9.21 Business with rate guarantees between 15-36 months \$.....0
 9.22 Business with rate guarantees over 36 months \$.....0

- 10.1 Does the reporting entity have Incentive Pool, Withhold or Bonus arrangements in its provider contracts? Yes No
- 10.2 If yes:
 10.21 Maximum amount payable bonuses \$.....37,471,211
 10.22 Amount actually paid for year bonuses \$.....37,471,211
 10.23 Maximum amount payable withholds \$.....0
 10.24 Amount actually paid for year withholds \$.....0

STATEMENT OF WORK FOR THE BLUE CROSS BLUE SHIELD OF MICHIGAN
GENERAL INTERROGATORIES (continued)

PART 2 - HEALTH INTERROGATORIES

- 11.1 Is the reporting entity organized as:
 - 11.12 A Medical Group/Staff Model, Yes [] No [X]
 - 11.13 An Individual Practice Association (IPA), or Yes [] No [X]
 - 11.14 A Mixed Model (combination of above)? Yes [] No [X]
- 11.2 Is the reporting entity subject to Minimum Net Worth Requirements? Yes [] No [X]
- 11.3 If yes, show the name of the state requiring such net worth. _____
- 11.4 If yes, show the amount required. _____
- 11.5 Is this amount included as part of a contingency reserve in stockholder's equity? Yes [] No [X]
- 11.6 If the amount is calculated, show the calculation:

12. List service areas in which reporting entity is licensed to operate:

1
Name of Service Area
Michigan

- 13.1 Do you act as a custodian for health savings account? Yes [] No [X]
- 13.2 If yes, please provide the amount of custodial funds held as of the reporting date. _____
- 13.3 Do you act as an administrator for health savings accounts? Yes [] No [X]
- 13.4 If yes, please provide the balance of the funds administered as of the reporting date. _____

**BLUE CROSS BLUE SHIELD OF MICHIGAN
FIVE-YEAR HISTORICAL DATA**

	1 2010	2 2009	3 2008	4 2007	5 2006
Balance Sheet Items (Pages 2 and 3)					
1. Total admitted assets (Page 2, Line 28).....	6,797,622,759	6,182,476,671	5,127,545,355	5,418,152,286	5,237,887,264
2. Total liabilities (Page 3, Line 24).....	4,038,155,202	3,620,246,663	2,900,138,842	3,012,063,208	2,736,443,080
3. Statutory surplus.....	2,759,467,557	2,562,230,008	2,227,406,513	2,406,089,078	2,501,444,184
4. Total capital and surplus (Page 3, Line 33).....	2,759,467,557	2,562,230,008	2,227,406,513	2,406,089,078	2,501,444,184
Income Statement Items (Page 4)					
5. Total revenues (Line 8).....	6,574,692,435	6,986,393,893	6,806,040,210	6,169,179,593	5,805,419,538
6. Total medical and hospital expenses (Line 18).....	5,793,567,136	6,395,751,497	6,107,862,995	5,685,387,252	5,205,222,315
7. Claims adjustment expenses (Line 20).....	249,703,600	292,544,193	245,471,136	214,473,405	179,680,979
8. Total administrative expenses (Line 21).....	562,582,673	542,482,269	482,568,788	476,968,610	446,184,971
9. Net underwriting gain (loss) (Line 24).....	(73,954,974)	(256,501,066)	(20,598,709)	(318,926,674)	808,273
10. Net investment gain (loss) (Line 27).....	211,486,689	241,495,372	62,719,392	224,087,974	181,831,855
11. Total other income (Lines 28 plus 29).....	(23,437,699)	3,248,849	(14,421,621)	70,167,452	11,930,239
12. Net income or (loss) (Line 32).....	205,229,863	12,579,275	4,124,919	16,184,425	158,926,121
Cash Flow (Page 6)					
13. Net cash from operations (Line 11).....	167,937,899	(111,885,115)	(72,861,855)	244,386,022	257,818,197
Risk-Based Capital Analysis					
14. Total adjusted capital.....	2,759,467,557	2,562,230,008	2,227,406,513	2,406,089,078	2,501,444,184
15. Authorized control level risk-based capital.....	395,551,652	394,335,822	338,214,279	348,173,506	317,971,740
Enrollment (Exhibit 1)					
16. Total members at end of period (Column 5, Line 7).....	1,530,557	1,667,179	1,730,312	2,581,219	2,569,448
17. Total member months (Column 6, Line 7).....	18,757,734	20,470,544	20,913,922	30,992,554	30,854,629
Operating Percentage (Page 4) (Item divided by Page 4, sum of Lines 2, 3, and 5) x 100 .0					
18. Premiums earned plus risk revenue (Line 2 plus Lines 3 and 5).....	100.0	100.0	100.0	100.0	100.0
19. Total hospital and medical plus other non-health (Line 18 plus Line 19).....	88.1	91.5	89.7	100.0	100.0
20. Cost containment expenses.....	1.5	1.8	1.4	1.4	1.1
21. Other claims adjustment expenses.....	2.3	2.4	2.2	2.1	2.0
22. Total underwriting deductions (Line 23).....	101.1	103.7	100.3	105.2	100.0
23. Total underwriting gain (loss) (Line 24).....	(1.1)	(3.7)	(0.3)	(5.2)	0.0
Unpaid Claims Analysis (U&I Exhibit, Part 2B)					
24. Total claims incurred for prior years (Line 13 Col. 5).....	574,147,051	611,438,173	554,051,907	551,239,223	450,712,757
25. Estimated liability of unpaid claims - [prior year (Line 13, Col. 6)].....	676,209,598	650,538,313	669,330,578	613,072,649	469,080,844
Investments in Parent, Subsidiaries and Affiliates					
26. Affiliated bonds (Sch. D Summary, Line 12, Col. 1).....					
27. Affiliated preferred stocks (Sch D. Summary, Line 18, Col. 1).....					
28. Affiliated common stocks (Sch D. Summary, Line 24, Col. 1).....	1,218,983,700	1,149,787,380	993,625,630	968,891,058	1,024,332,105
29. Affiliated short-term investments (subtotal included in Sch. DA, Verification, Column 5, Line 10).....					
30. Affiliated mortgage loans on real estate.....					
31. All other affiliated.....					
32. Total of above Lines 26 to 31.....	1,218,983,700	1,149,787,380	993,625,630	968,891,058	1,024,332,105

NOTE: If a party to a merger, have the two most recent years of this exhibit been restated due to a merger in compliance with the disclosure requirements of SSAP No. 3, Accounting Changes and Correction of Errors?

Yes [] No [X]

If no, please explain:
Not Applicable

SCHEDULE T - PREMIUMS AND OTHER CONSIDERATIONS

Allocated by States and Territories

1	Direct Business Only								
	2	3	4	5	6	7	8	9	
State, Etc.	Active Status	Accident & Health Premiums	Medicare Title XVIII	Medicaid Title XIX	Federal Employees Health Benefits Program Premiums	Life & Annuity Premiums and Other Considerations	Property/Casualty Premiums	Total Columns 2 Through 7	Deposit-Type Contracts
1. Alabama.....AL	N							0	
2. Alaska.....AK	N							0	
3. Arizona.....AZ	N							0	
4. Arkansas.....AR	N							0	
5. California.....CA	N							0	
6. Colorado.....CO	N							0	
7. Connecticut.....CT	N							0	
8. Delaware.....DE	N							0	
9. District of Columbia.....DC	N							0	
10. Florida.....FL	N							0	
11. Georgia.....GA	N							0	
12. Hawaii.....HI	N							0	
13. Idaho.....ID	N							0	
14. Illinois.....IL	N							0	
15. Indiana.....IN	N							0	
16. Iowa.....IA	N							0	
17. Kansas.....KS	N							0	
18. Kentucky.....KY	N							0	
19. Louisiana.....LA	N							0	
20. Maine.....ME	N							0	
21. Maryland.....MD	N							0	
22. Massachusetts.....MA	N							0	
23. Michigan.....MI	L	5,271,608,545	934,854,132		354,584,431			6,561,047,108	
24. Minnesota.....MN	N							0	
25. Mississippi.....MS	N							0	
26. Missouri.....MO	N							0	
27. Montana.....MT	N							0	
28. Nebraska.....NE	N							0	
29. Nevada.....NV	N							0	
30. New Hampshire.....NH	N							0	
31. New Jersey.....NJ	N							0	
32. New Mexico.....NM	N							0	
33. New York.....NY	N							0	
34. North Carolina.....NC	N							0	
35. North Dakota.....ND	N							0	
36. Ohio.....OH	N							0	
37. Oklahoma.....OK	N							0	
38. Oregon.....OR	N							0	
39. Pennsylvania.....PA	N							0	
40. Rhode Island.....RI	N							0	
41. South Carolina.....SC	N							0	
42. South Dakota.....SD	N							0	
43. Tennessee.....TN	N							0	
44. Texas.....TX	N							0	
45. Utah.....UT	N							0	
46. Vermont.....VT	N							0	
47. Virginia.....VA	N							0	
48. Washington.....WA	N							0	
49. West Virginia.....WV	N							0	
50. Wisconsin.....WI	N							0	
51. Wyoming.....WY	N							0	
52. American Samoa.....AS	N							0	
53. Guam.....GU	N							0	
54. Puerto Rico.....PR	N							0	
55. U.S. Virgin Islands.....VI	N							0	
56. Northern Mariana Islands.....MP	N							0	
57. Canada.....CN	N							0	
58. Aggregate Other alien.....OT	XXX	0	0	0	0	0	0	0	0
59. Subtotal.....XXX		5,271,608,545	934,854,132	0	354,584,431	0	0	6,561,047,108	0
60. Reporting entity contributions for Employee Benefit Plans.....XXX								0	
61. Total (Direct Business).....(a)	1	5,271,608,545	934,854,132	0	354,584,431	0	0	6,561,047,108	0

DETAILS OF WRITE-INS

5801.....								0	
5802.....								0	
5803. Summary of remaining write-ins for line 58.....								0	
5898. Total (Lines 5801 thru 5803 + 5898) (Line 58 above).....		0	0	0	0	0	0	0	0
5899. Total (Lines 5801 thru 5803 + 5898) (Line 58 above).....		0	0	0	0	0	0	0	0

(L) - Licensed or Chartered - Licensed Insurance Carrier or Domiciled RRG; (R) - Registered - Non-domiciled RRGs; (Q) - Qualified - Qualified or Accredited Reinsurer; (E) - Eligible - Reporting Entities eligible or approved to write Surplus Lines in the state; (N) - None of the above - Not allowed to write business in the state.

Explanation of basis of allocation by states, premiums by state, etc.

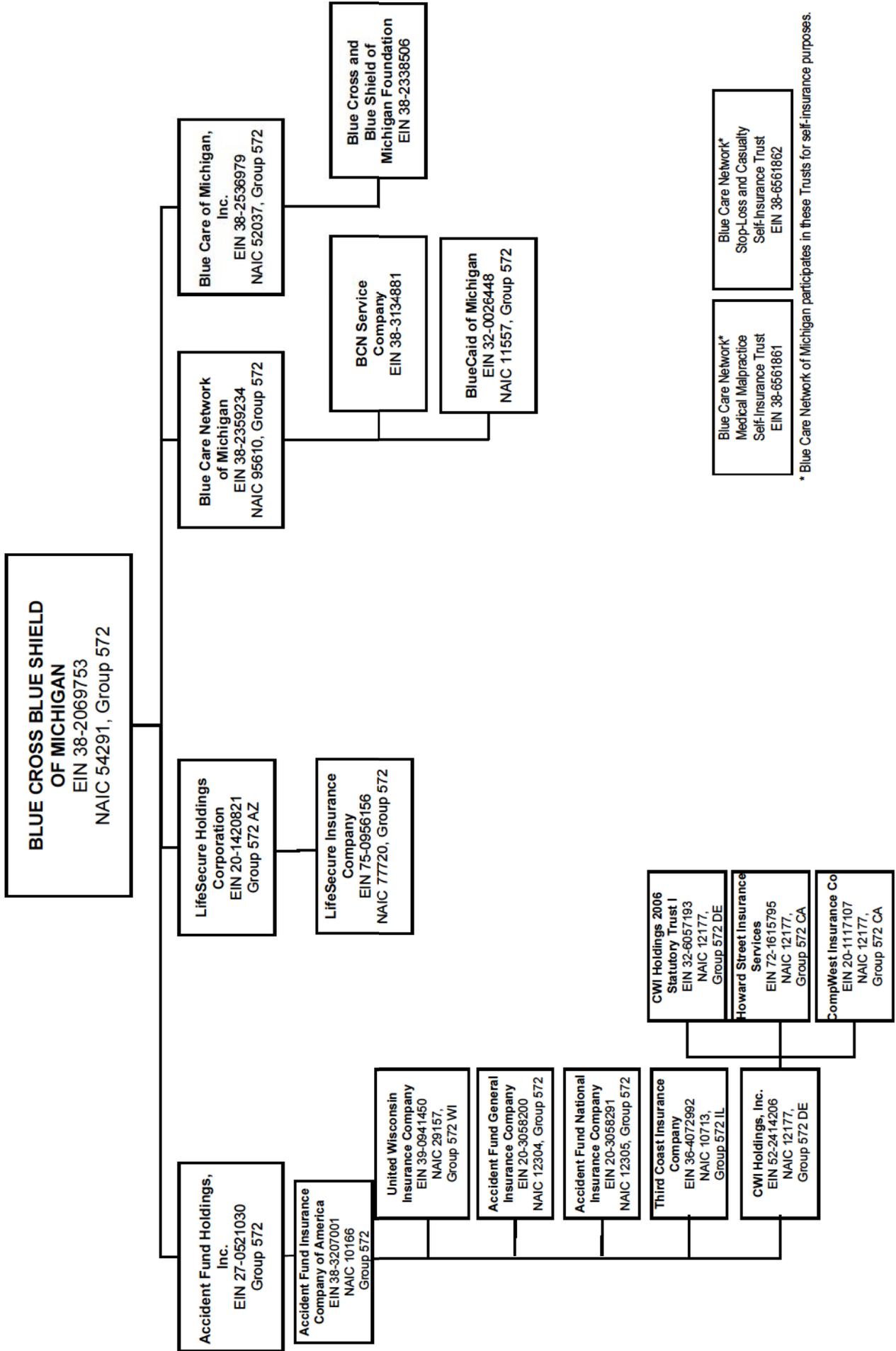
All Premiums Written on Michigan

(a) Insert the number of L responses except for Canada and Other Alien.

Blue Cross Blue Shield of Michigan



SUBSIDIARY & AFFILIATE ORGANIZATION CHART



* Blue Care Network of Michigan participates in these Trusts for self-insurance purposes.

**2010 ALPHABETICAL INDEX
HEALTH ANNUAL STATEMENT BLANK**

Analysis of Operations By Lines of Business	7	Schedule D – Part 6 – Section 1	E16
Assets	2	Schedule D – Part 6 – Section 2	E16
Cash Flow	6	Schedule D – Summary By Country	SI04
Exhibit 1 – Enrollment By Product Type for Health Business Only	17	Schedule D – Verification Between Years	SI03
Exhibit 2 – Accident and Health Premiums Due and Unpaid	18	Schedule DA – Part 1	E17
Exhibit 3 – Health Care Receivables	19	Schedule DA – Verification Between Years	SI11
Exhibit 4 – Claims Unpaid and Incentive Pool, Withhold and Bonus	20	Schedule DB – Part A – Section 1	E18
Exhibit 5 – Amounts Due From Parent, Subsidiaries and Affiliates	21	Schedule DB – Part A – Section 2	E19
Exhibit 6 – Amounts Due To Parent, Subsidiaries and Affiliates	22	Schedule DB – Part A – Verification Between Years	SI12
Exhibit 7 – Part 1 – Summary of Transactions With Providers	23	Schedule DB – Part B – Section 1	E20
Exhibit 7 – Part 2 – Summary of Transactions With Intermediaries	23	Schedule DB – Part B – Section 2	E21
Exhibit 8 – Furniture, Equipment and Supplies Owned	24	Schedule DB – Part B – Verification Between Years	SI12
Exhibit of Capital Gains (Losses)	15	Schedule DB – Part C – Section 1	SI13
Exhibit of Net Investment Income	15	Schedule DB – Part C – Section 2	SI14
Exhibit of Nonadmitted Assets	16	Schedule DB – Part D	E22
Exhibit of Premiums, Enrollment and Utilization (State Page)	29	Schedule DB – Verification	SI15
Five-Year Historical Data	28	Schedule DL – Part 1	E23
General Interrogatories	26	Schedule DL – Part 2	E24
Jurat Page	1	Schedule E – Part 1 – Cash	E25
Liabilities, Capital and Surplus	3	Schedule E – Part 2 – Cash Equivalents	E26
Notes To Financial Statements	25	Schedule E – Part 3 – Special Deposits	E27
Overflow Page For Write-ins	41	Schedule E – Verification Between Years	SI16
Schedule A – Part 1	E01	Schedule S – Part 1 – Section 2	30
Schedule A – Part 2	E02	Schedule S – Part 2	31
Schedule A – Part 3	E03	Schedule S – Part 3 – Section 2	32
Schedule A – Verification Between Years	SI02	Schedule S – Part 4	33
Schedule B – Part 1	E04	Schedule S – Part 5	34
Schedule B – Part 2	E05	Schedule S – Part 6	35
Schedule B – Part 3	E06	Schedule T – Part 2 – Interstate Compact	37
Schedule B – Verification Between Years	SI02	Schedule T – Premiums and Other Considerations	36
Schedule BA – Part 1	E07	Schedule Y – Information Concerning Activities of Insurer Members of a Holding Company Group	38
Schedule BA – Part 2	E08	Schedule Y - Part 2 – Summary of Insurer's Transactions With Any Affiliates	39
Schedule BA – Part 3	E09	Statement of Revenue and Expenses	4
Schedule BA – Verification Between Years	SI03	Summary Investment Schedule	SI01
Schedule D – Part 1	E10	Supplemental Exhibits and Schedules Interrogatories	40
Schedule D – Part 1A – Section 1	SI05	Underwriting and Investment Exhibit – Part 1	8
Schedule D – Part 1A – Section 2	SI08	Underwriting and Investment Exhibit – Part 2	9
Schedule D – Part 2 – Section 1	E11	Underwriting and Investment Exhibit – Part 2A	10
Schedule D – Part 2 – Section 2	E12	Underwriting and Investment Exhibit – Part 2B	11
Schedule D – Part 3	E13	Underwriting and Investment Exhibit – Part 2C	12
Schedule D – Part 4	E14	Underwriting and Investment Exhibit – Part 2D	13
Schedule D – Part 5	E15	Underwriting and Investment Exhibit – Part 3	14

Exhibit 18

Search MiBCN.com



Blue Care Network of Michigan and its subsidiaries have more than 680,000 members. Blue Care Network features award-winning disease management programs and the largest HMO network of physicians and hospitals in the state, with more than 4,800 primary care physicians, more than 14,000 specialists and most of the state's leading hospitals. Blue Care Network, a nonprofit corporation, is the affiliated HMO of Blue Cross Blue Shield of Michigan and an independent licensee of the Blue Cross and Blue Shield Association.

Corporate information

Find information about our [corporate structure](#), [history](#), [annual report](#) and our [vision, mission and values](#).

Quality and safety

Blue Care Network supports initiatives to help improve [health care quality and patient safety](#) across all care settings.

Policies and practices

Our [policies and practices](#) ensure you receive the most appropriate medical care.

Our commitment to you

As a part of Blue Cross Blue Shield of Michigan, we are uniquely committed to [helping grow the communities](#) in which we live and work and [supporting research and innovative programs](#).

Blue Cross and Blue Shield

Learn more about our relationship with [Blue Cross Blue Shield of Michigan](#) and [The Blue Cross and Blue Shield Association](#).

State and regulatory

The Office of Financial and Insurance Regulation, a division of the Michigan Department of Labor & Economic Growth provides [oversight](#) or all Michigan health maintenance organizations.

Exhibit 19



Home » About us » Corporate information » Corporate structure

Corporate information[Annual report](#)[Board of directors](#)[Corporate officers](#)[> Corporate structure](#)[Awards and recognition](#)[History and highlights](#)[Vendor code of business conduct](#)[Vision, mission and values](#)**Quality and safety****Policies and practices****Our commitment to you****Blue Cross and Blue Shield****State and regulatory**

Corporate structure

Blue Care Network is owned by Blue Cross Blue Shield of Michigan. As our only shareholder, BCBSM establishes the global policies under which we operate and retains oversight of BCN operations through our board of directors.

Our board of directors consists of 18 individuals. Twelve board directors are appointed by BCBSM while six are elected by BCN subscribers. Our board develops policy, assures our financial well-being and oversees management's execution of policy and adherence to law. Each director serves a three-year term until a successor is elected or appointed. The terms of one-third of our directors expire each year. Our board members include BCN members, other private citizens and representatives of large business, small business, labor, physicians, hospitals and other health care providers.

The power of the BCN board to make policy has four sources:

- **The Michigan Nonprofit Corporation Act** — BCN was organized under and is regulated by this law.
- **Articles of Incorporation** — These articles establish the name, purpose and powers of the corporation.
- **Bylaws** — The board can change the bylaws, except articles III, V, and X, which address shareholder powers, the board of directors and amendments to the bylaws. These articles can only be changed by our shareholders.
- **The Shareholder (BCBSM)** — The shareholder must first approve any proposed board actions related to: compensation, benefits and prerequisites for directors, officers and management personnel; appointment of independent auditors and actuaries; establishing or changing utilization management or quality assessment programs; establishing or changing underwriting guidelines, rating methods, or pricing policies; establishing or changing the corporation's business plan or annual budget.

The scope of board policy-making is also shaped by federal regulations and other agreements the corporation may be party to in the course of its business at any given time.

Strategic planning, day-to-day decision-making and implementation of board policy are delegated to the chief executive officer who is answerable to the board.

The board's powers are exercised through votes of the full body and through committees. For voting purposes, a vote of a majority of directors present at any meeting where a quorum exists is the action of the board. A quorum is achieved at any meeting where a majority of directors then in office are present.

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page modified 09/23/2011

Exhibit 31



Home » About us » Corporate information » Historical & highlights

Corporate information[Annual report](#)[Board of directors](#)[Corporate officers](#)[Corporate structure](#)[Awards and recognition](#)[History and highlights](#)[Vendor code of business conduct](#)[Vision, mission and values](#)**Quality and safety****Policies and practices****Our commitment to you****Blue Cross and Blue Shield****State and regulatory**

Historical and other highlights

Blue Cross and Blue Shield of Michigan entered the health maintenance organization industry in 1975 with the purchase of small health plans in east and mid-Michigan. By 1998 BCBSM owned four independent regional HMOs that were merged into Blue Care Network of Michigan — an HMO that covers most of the state and serves more than 600,000 members.

2010

- BCN received excellent accreditation from NCQA – for the 11th year in a row.
- BCN introduced three new products: Savings Plus Rx, Healthy *Blue* Living RewardsSM and Blue EssentialsSM.
- BCN named by the Michigan Business and Professionals Association as one of West Michigan's 101 Best and Brightest Companies to Work For – for the third year in a row. Also named as one of Metropolitan Detroit's Best and Brightest Companies to Work For.
- Kevin Klobucar becomes Blue Care Network's president and CEO.

2009

- BCN enters the consumer-directed health plan market with BCN HMO HRASM– a product that will help employer groups control their healthcare spending dollars.
- BCN launched MyBlue MedigapSM, a product for individual Medicare eligible enrollees.
- BlueCaid[®] received a 15th place ranking in the nation (out of 82 health plans) and third place ranking in Michigan (out of 14 health plans) in a ranking of the best health plans by U.S. News and World Report.
- BCN was named one of the Best and Brightest companies to work for in Southeast Michigan for the third year in a row and in West Michigan for the second consecutive year.
- Healthy Blue LivingSM, BCN's innovative product that rewards members for living a healthy lifestyle, reached the 100,000 member milestone.

2008

- Henry Ford Medical Group primary care physicians added to provider network.
- BCN receives Excellent Accreditation from NCQA for ninth consecutive year.
- Radiology management program and fraud, waste and abuse software implemented in an effort to manage escalating costs.
- BCN receives the Crystal Rose Award for Outstanding Community Partner by Hospice of Michigan. The award is given annually to companies that exemplify a strong dedication to Hospice of Michigan.
- Renaissance Health Care, Inc. was retained by BCN to help members with end-stage renal disease.
- In a pilot program, BCN is the first HMO in Michigan to reimburse virtual office visits.
- Received the Gallup[®] Great Work Place Award for 2008 and was named one of West

Michigan's and Southeast Michigan's Best and Brightest companies to work for.

- BCN's Jeanne Carlson, president and chief executive officer, and Sue Kluge, senior vice president and chief financial officer, were recognized on by Inforum Inner Circle™ as being two of the most influential women in Southeastern Michigan.

2007

- BCN launches BlueCaid® which provides medical services to eligible Medicaid recipients. BlueCaid was acquired as M-CAID when it purchased M-CARE.
- BCN was named by the Michigan Business & Professionals Association as one of Metro Detroit's 101 Best and Brightest companies to work for.
- Healthy Blue LivingSM was awarded the 2007 Disease Management Leadership Award for Outstanding Health Plan by the Disease Management Association of America.
- Medicare Advantage celebrates its 10,000th member.
- Blue Care Network was presented with the "Gallup Great Workplace Award," recognizing BCN as having one of the world's "most engaged work forces."
- The Blues and U-M Health System launched Michigan HealthQuarters, a new joint venture for Blue Cross Blue Shield of Michigan and the University of Michigan Health System, dedicated to improving the quality of the state's health care system.
- M-CARE transitions to BCN.
- BCN introduces Wellness Works for its employees, a company wide program that challenges employees to become healthier.

2006

- BCN rated Excellent by NCQA, a designation held since 2000. Physician recognition program and physician performance measurement and improvement processes contribute to high rating.
- BCN's Web site awarded Health Web Site Accreditation by URAC, the Utilization Review Accreditation Committee, a leader in promoting health care quality.
- BCN Advantage becomes effective Jan. 1, with 2,200 PCPs and specialists.
- BCN announces Centers of Excellence for cardiac care, low back pain treatment and bariatric surgery.
- BCN provider and member communications win these Renaissance Awards:
 - The *Professional Services Manual* receives IABC's "Best of Show" in the Writing category in addition to an Award of Excellence in technical writing.
 - Quit the Nic postcard receives an Award of Honor.
- Blue Care Network grows business with Healthy *Blue Living*SM — an innovative health plan that rewards members for pursuing their health goals — and Macomb Blue — that offers low-cost health care for Macomb County businesses.
- Chronic obstructive pulmonary disorder added to disease management offerings, bringing to nine the total number of programs offered.
- BCN membership passes 480,000 mark.
- Jeanne Carlson becomes Blue Care Network's new president and CEO.

2005

- BCN launches redesigned Web site for members at **MiBCN.com**.
- BCN offers Blue Elect, a flexible self-referral plan that gives members the preventive and health management benefits of a health maintenance organization with options where to receive care.
- Customers FIRST, a multifaceted plan that encompasses tactical and strategic components, is introduced to employees to improve BCN's service to customers.
- NCQA gives four of BCN's disease management programs Excellent accreditation.

2004

- BCN establishes new headquarters in Southfield, Michigan.
- Weigh to Go™, a program that offers a comprehensive approach to weight control, launches.
- Renal management is added to chronic care management.
- BCN adds deductible product that allows groups to offer BCN benefits, value-added programs and comprehensive network of providers and hospitals at a lower cost.
- BCN receives awards for quality management and disease management programs that educate members about disease prevention and self-management and remind them about needed services:
 - Asthma Management program — Recognizing Excellence — *Best Disease Management Program Award* from the Disease Management Association of America
 - Diabetes management program — *National Exemplary Practice Honorable Mention* from America's Health Insurance Plans
 - *Excellence in Immunization Award* from the National Partnership for Immunization
 - *Spirit of Collaboration Award* from the Michigan Cancer Consortium for participating in a statewide colorectal cancer project
 - *Best of Blues — Communication Award* for Domestic Violence health education program
- BCN receives *Renaissance Awards* from the International Association of Business Communicators for:
 - *Excellence* in overall corporate communications strategy for Facets provider communications
 - *Merit* in special print communication (1-3 color) for the Special Facets Edition Network News
 - *Merit* in employee/member communications for the booklet entitled *Climbing to the Top BCN Best Practices & Soaring Higher*
 - *Honors* in annual reports (1-3 color) for the *BCN University 2002 Yearbook*

- *Honors* in intranets/employee portals for the Provider Affairs intranet site

2003

- The company upgrades to Facets, a Windows-based operating system that connects claims processing, provider and member payments, billing and member enrollment in one central data bank.
- BCN adds cardiovascular program to disease management lineup.
- AccordantCare partner provides case management program for rare, complex, chronic diseases to BCN members.
- BCN is showcased as an exemplary health maintenance organization on *CNN's Champions of Industry* television program.
- BCN receives the *Renaissance Award* from the International Association of Business Communicators for excellence in a marketing plan.
- Blue Care Network receives the *Silver Quill Award* from the Great Lakes district of the International Association of Business Communicators for excellence in a marketing plan.
- BCN launches advertising campaign with first-ever BCN television advertisement.

2002

- BCN is the first commercial HMO in Michigan and the nation to receive NCQA accreditation for disease management programs addressing adult diabetes, adult and child asthma and congestive heart failure.
- BCN meets financial goals, showing positive contributions to reserves.
- Migraine management and low back pain added to disease management programs.
- BCN CEO, Kevin Seitz, is presented with the National Management Association's highest honor — *The Silver Knight Award*.
- BCN receives the following Michigan Association of Health Plan Pinnacle Awards:
 - *Health Care Program Award* for its Quit the Nic! smoking cessation program
 - *Community Partnership/Outreach Award* for collaborative efforts with other health plans for the Southeast Michigan Diabetes Health Fair
 - An *Exemplary Award* for its Health Risk Appraisal Program

2001

- BCN holds 12 employee workshops in June and July and sets fresh vision, mission and values for the future
- BCN's company-owned health centers in east and mid-Michigan unveil a new name — Family Health Centers of Blue Care Network. The centers provide medical care with physicians and staff specializing in family practice, internal medicine and pediatrics.

- BCN receives the following *Pinnacle Awards* from the Michigan Association of Health Plans:
 - *Third Place* in the category of Business/Operational Performance for the "Satisfaction Pays" Program
 - *Third Place* in the category of Community Outreach/Partnership for its Domestic Violence Awareness Campaign
 - *A Meritorious Program Status* in the category of Health Care Programs for its Asthma Management Program, Health Management Program and Health Risk Appraisal Program Overviews
- Depression is added to the disease management program list.
- Kevin Seitz is named president and chief executive officer.

2000

- BCN wins AAHP Exemplary Practice for Asthma Award.

1999

- Claims operations are moved to west Michigan.
- Customer Service operations are moved to southeast Michigan.

1998

- Blue Care Network of Michigan is established as the largest HMO in Michigan with the merger of four independent regional HMOs.

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page modified 09/23/2011

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Blue Cross Blue Shield of Michigan Names Seitz as Executive Vice President of Health Care Value Enhancement and Carlson as President and CEO of Blue Care Network

[Return to Newsroom](#) | [Return to September 2006](#)

Contact:

mediarelations@bcbsm.com

DETROIT, September 29, 2006 -

Blue Cross Blue Shield of Michigan has named Kevin Seitz, president and CEO of Blue Care Network and BCBSM senior vice president of subsidiary operations, to a new position as executive vice president of health care value enhancement for BCBSM. Succeeding Seitz as president and CEO of Blue Care Network and BCBSM senior vice president of subsidiary operations is Jeanne Carlson, currently chief operating officer for BCN.

Blue Care Network is the HMO subsidiary of Blue Cross Blue Shield of Michigan.

In his new role, Seitz will lead an integrated approach to containing health care costs while improving quality. Among his responsibilities will be managing the Michigan Blues' relationships with more than 20,000 physicians, 160 hospitals and thousands of other health care providers who deliver services to Blues members. Blue Care Network will report to BCBSM through Seitz as part of his responsibilities.

"Kevin has done a tremendous job at Blue Care Network," said Daniel J. Loepp, Blues president and CEO. "His strong leadership skills, and extensive experience in policy and strategy, make him exceptionally well-suited for this new challenge."

Seitz's accomplishments at BCN include returning the HMO to fiscal stability, introducing new products to meet client needs such as the innovative Healthy Blue Living product, offering state-of-the-art disease management programs and strengthening BCN's relationships with key stakeholders.

Prior to being named BCN president and CEO in February 2001, Seitz served in various capacities at BCBSM including vice president of product development and vice president of PPO and ancillary services.

Before joining the Blues in 1991, Seitz was director of the Medicaid program for the State of Michigan and associate director of human services in the fiscal agency of the Michigan House of Representatives.

New Blue Care Network President and CEO Jeanne Carlson has been chief operating officer for BCN since July 2002. She has worked closely with Seitz in leading the company through a rapidly changing health care environment.

"Jeanne is a natural fit for this new role because of her wide range of experience in health care and her accomplishments over the last several years as chief operating officer at Blue Care Network," said Loepp.

Like Seitz, Carlson also has served in several major capacities at BCBSM. Previously she was vice president for

Health Insurance Portability and Accountability Act compliance and operational effectiveness for the company. She also was vice president of several key areas including the General Motors account, PPO and ancillary services, provider relations, provider contracting, and the Ford/AutoAlliance/Rouge Steel accounts.

Carlson is a certified public accountant and was a staff auditor with Touche, Ross and Company before joining the Blues.

Blue Cross Blue Shield of Michigan, a nonprofit corporation, provides or administers health care benefits to just over 4.7 million members through a variety of plans: Traditional Blue Cross Blue Shield; Blue Preferred, Community Blue and Healthy Blue PPOs; Blue Choice Point of Service; Blue Care Network HMO, and Flexible Blue plans compatible with health savings accounts. Blue Cross Blue Shield of Michigan and Blue Care Network are nonprofit corporations and independent licensees of the Blue Cross and Blue Shield Association. For more information, visit www.bcbsm.com.

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[You Are Here: Home/Blue Care Network of Michigan/Newsroom/September 2006](#)

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Exhibit 34

Not Reported in F.Supp.2d, 2009 WL 2408898 (E.D.Wis.)
(Cite as: 2009 WL 2408898 (E.D.Wis.))

H

Only the Westlaw citation is currently available.

United States District Court,
E.D. Wisconsin.
APPLETON PAPERS INC. and NCR Corp.,
Plaintiffs,
v.
GEORGE A. WHITING PAPER CO., et al., De-
fendants.

No. 08-C-16.
July 31, 2009.

ORDER

WILLIAM C. GRIESBACH, District Judge.

*1 The Georgia-Pacific Defendants (herein, the “Defendants”) have filed two motions to compel production of documents. In the first of these, they seek documents responsive to a subpoena they issued to Appleton Coated LLC, a nonparty to this action. They assert, based on inferences from other documents produced in discovery, that the sought documents exist and are in the possession of one or more of the corporate entities that owns or is affiliated with Appleton Coated LLC. Oral argument was heard on July 30.

Appleton Coated LLC is a member of a labyrinthine group of corporations under the ownership of a company called Sequana, S.A., a French paper company. The subpoena sought documents from four other nonparties: Arjo Wiggins USA, Inc., Arjo Wiggins Appleton, Arjomari Priouz, and Arjowiggins SAS. According to the briefs, this last company is the principal focus of the subpoena.

Defendants assert that the documents they seek could shed light on NCR's knowledge of the toxicity and discharging of PCBs because NCR had a close relationship with a company called Wiggins Teape (“WT”), a former licensee of NCR's PCB emulsion that produced and recycled carbonless copy paper. Defendants assert that WT became con-

cerned about PCBs in the 1960's and conducted some testing during that time, and correspondence and other documents from this period should be available. The Defendants' brief relates a long and tortuous corporate history, the upshot of which is that the WT company merged with several companies and ultimately restructured itself into what is now known as Arjowiggins SAS. Arjowiggins SAS is a sister company to Appleton Coated LLC—both are owned by Sequana, S.A.

Appleton Coated LLC opposes the motion on number of grounds, but I conclude at the outset that its objections have been waived. Objections to a subpoena “must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served.” [Fed.R.Civ.P. 45\(c\)\(2\)\(B\)](#). Failure to object within the time period can result in a waiver of the objection. The subpoena was served on Appleton Coated LLC on January 29; the first inkling of an objection came roughly a month later, on February 27.

Appleton Coated concedes that its objections were untimely, but it argues it should be relieved of any waiver because the time limit in [Rule 45\(c\)\(2\)\(B\)](#) is not chiseled in stone. Several of its arguments are meritless. It argues, for example, that Defendants failed to comply with [Rule 45](#) because the subpoena would require a nonparty to travel more than 100 miles. [Fed.R.Civ.P. 45\(c\)\(3\)\(A\)\(ii\)](#). But the subpoena seeks only documents, and a “person commanded to produce documents ... need not appear in person at the place of production.” [Fed.R.Civ.P. 45\(c\)\(2\)\(A\)](#). Appleton Coated also argues that it should be relieved of the time limit because it is currently searching its records for compliant documents, but attempting to comply with a subpoena is not the same as making an objection. And of course if such an argument were viable it would forever postpone the 14-day objection period and obviate the rule entirely.

*2 Appleton Coated does argue that the time

Not Reported in F.Supp.2d, 2009 WL 2408898 (E.D.Wis.)
(Cite as: 2009 WL 2408898 (E.D.Wis.))

limit of [Rule 45\(c\)\(2\)\(B\)](#) should not be applied in cases where compliance would be unfair or impossible. For example, if the Defendants had asserted that Appleton Coated had control over the Green Bay Packers Corporation and Appleton Coated had failed to object in a timely fashion, the “waiver” of the objection would not automatically mean the Defendants would somehow be entitled to have Appleton Coated produce documents owned by the Green Bay Packers. One can't waive something to which he has no right in the first place, and of course the Rules themselves are intended to do justice, [Fed.R.Civ.P. 1](#), and to protect third-parties from harassment. But when two companies share corporate ownership, it can hardly be said that an injustice would be worked merely if one company obtains documents from the other. “[W]e think it is clear that [Rule 45](#) contemplates assertion of all objections to document production within 14 days, including those based on the act of production privilege. Thus, assuming the[y] had a reasonable basis for asserting the Fifth Amendment privilege at the time they first received the subpoenas, they should have raised the privilege at that time.” [In re DG Acquisition Corp.](#), 151 F.3d 75, 81 (2d Cir.1998) (finding waiver may be relieved if constitutional concerns are present).

Even if Appleton Coated's objections were properly before me, I would grant the motion. Appleton Coated's objections are that compliance with the subpoena is too burdensome and that the Defendants have not established that it has the requisite control over documents at its sister company, Arjowiggins SAS. The objection to the burden is not persuasive because the movants have identified only a few entities and locations that might hold the documents they seek. This is not, as Appleton Coated paints it, a mandate to search all the records of every entity owned by Susquana. In fact, there is no hint of a fishing expedition or any other improper purpose in the subpoenas or briefs. Indeed, at the hearing on the motion, Appleton Coated conceded that the Defendants had significantly limited their initial request.

Appleton Coated's principal objection is that it does not control the documents in question. [Rule 34\(a\)](#) allows requests to produce documents within another party's “possession, custody, or control.” [Fed.R.Civ.P. 34\(a\)](#). As Judge Warren has found, “in deciding whether a subsidiary has ‘control’ over documents held by its parent corporation, courts focus on the closeness of the relationship between the entities.” [Flavel v. Svedala Industries, Inc.](#), 1993 WL 580831, *4 (E.D.Wis.1993). It is true that the mere existence of shared ownership does not, in itself, warrant a finding of control. For example, corporate sisters in a conglomerate or holding company like Berkshire Hathaway might have absolutely nothing to do with each other (e.g., See's Candies and GEICO Insurance)-they are merely investments that happen to be held by the same shareholders. But the Defendants have established that there is sufficient intermingling of resources and efforts here such that one could reasonably expect that Appleton Coated LLC has the ability to obtain documents from Arjowiggins. As they point out, Appleton Coated's website states that it is a subsidiary of Arjowiggins SAS, and it points viewers of its website directly to a link to Arjowiggins' own website:

***3** Appleton Coated, with approximately 800 employees, is a subsidiary of Arjowiggins SAS, a global leader in the production of high value-added creative and technical papers. Headquartered in Paris, France, Arjowiggins employs 7500, has production facilities across 4 continents, and generates sales of approximately 2 billion annually.

(<http://www.appletoncoated.com/index.php?GroupID=37>, last visited July 2, 2009.)

For its part, Arjowiggins' website lists Appleton Coated LLC as one of its North American Production sites. (Dkt.# 444, Ex. 6.) The only conclusion one could draw from this is that not only are the two entities related in a corporate ownership sense, they are united in a shared business purpose. Having boasted to the world about its close corporate relationship with Arjowiggins, Appleton Coated

Not Reported in F.Supp.2d, 2009 WL 2408898 (E.D.Wis.)
(Cite as: 2009 WL 2408898 (E.D.Wis.))

cannot now distance itself when it is convenient. Accordingly, I conclude that the motion to compel should be granted.

The Defendants also move to compel production of documents from Plaintiff Appleton Papers, Inc. The documents sought are similar in nature (or identical) to the documents sought from Appleton Coated LLC. Again the principal issue is control, and some context is required. Arjo Wiggins Appleton (“AWA”) was formed after a merger in 1990 between WT, Appleton Papers, Inc. and a French company called Arjomari Prioux. In 2001, the current Appleton Papers, Inc. (one of the two plaintiffs in this action) was formed when the Appleton coating operation was sold to its employees through an ESOP. Under various indemnity agreements connected with the sale, Arjo Wiggins Appleton agreed to indemnify Appleton Papers, Inc. for certain Fox River cleanup costs-potentially more than a hundred million dollars' worth. This arrangement gave to AWA the right to direct the defense of certain environmental claims, and Plaintiffs have conceded AWA is directing Appleton Papers, Inc.'s prosecution of this lawsuit through a power of attorney agreement. Defendants assert that the indemnification and power of attorney agreements mean that AWA is the real party in interest in this lawsuit, even though Appleton Papers, Inc. is the nominal plaintiff. As such, Appleton Papers, Inc. should be deemed “control” the actions of AWA for purposes of Fed.R.Civ.P. 34(a).

Unlike the corporate relationship between Appleton Coated and Arjowiggins SAS, here AWA has no apparent ownership interest in Appleton Papers, Inc. This is not fatal, however, because in many ways the relationship between AWA and Appleton Papers, Inc. is, for purposes of this lawsuit, even closer. The potential for this lawsuit was clearly envisioned by the parties when Appleton Papers, Inc. was created, and now that it has materialized it is clear from the filings and argument that AWA is calling the shots. Although it might be argued that the arrangement gives AWA the right to

control certain of Appleton Papers' actions-not the other way around-that is not particularly damning either. Courts considering the control issue under Rule 34 also look to which parties will benefit from the lawsuit.

*4 If a non-party will directly receive the benefit of an award, then it is unjust that it can frustrate the discovery process and the complete resolution of the issues by refusing to furnish documents in its possession. In *Compagnie Francaise*, the French government, which had indemnified the plaintiff for its loss, would recover any judgment. To deny discovery of documents held by the government would be “unacceptable.” 105 F.R.D. at 35. In *Soletanche* and *Rodio*, an American subsidiary brought a declaratory judgment action on patents held by its parent, which refused to permit discovery of certain documents relating to the validity of its patent. The court determined that the foreign parent would receive the benefit of the litigation, and the American subsidiary was only an instrumentality. 99 F.R.D. at 272. If the nonparty is to receive a benefit from the litigation, that fact along with others must be weighed in determining control for purposes of Rule 34.

Afros S.P.A. v. Krauss-Maffei Corp., 113 F.R.D. 127, 131 (D.Del.1986).

I am sensitive to the fact that American law affords a significant level of respect to the corporate form and will not ignore corporate formalities absent good cause. See, e.g., *Kestrel Coal Pty. Ltd. v. Joy Global, Inc.*, 362 F.3d 401 (7th Cir.2004). But Rule 34's scope is broader than mere possession or ownership; by including “control” in its breadth, the rule explicitly allowed discovery of documents that may not actually be owned by the party in question. Indeed, the Plaintiffs have conceded that the various district courts' analyses set forth above govern the outcome here. Thus, although AWA lacks a current ownership interest in Appleton Papers, Inc., when it sold the company it essentially kept on the bundle of liability relating to this lawsuit. It now has a power of attorney over this law-

Not Reported in F.Supp.2d, 2009 WL 2408898 (E.D.Wis.)
(Cite as: 2009 WL 2408898 (E.D.Wis.))

suit and is required to indemnify Appleton Papers, Inc. for its cleanup expenses. By all accounts, therefore, AWA is the real part in interest here and will be the principal beneficiary of this litigation. Accordingly, I conclude that the Defendants have adequately shown that the documents in AWA's possession are within the control of Appleton Papers, Inc.

Accordingly, the motion to compel [Dkt. # 423] Appleton Papers, Inc. to produce documents is **GRANTED**. The motion to compel [Dkt. # 420] Appleton Coated LLC to produce documents is **GRANTED**. Appleton Coated LLC and Appleton Papers, Inc. are ordered to search for and produce any documents in the possession of AWA or Ar-jowiggins SAS that are responsive to Georgia-Pacific's subpoenas.

SO ORDERED.

E.D.Wis.,2009.

Appleton Papers Inc. v. George A. Whiting Paper Co.

Not Reported in F.Supp.2d, 2009 WL 2408898 (E.D.Wis.)

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Only the Westlaw citation is currently available.

This decision was reviewed by West editorial staff and not assigned editorial enhancements.

United States District Court,
E.D. Michigan,
Southern Division.
BRICKLAYERS PENSION TRUST FUND-
METROPOLITAN AREA, et al., Plaintiffs,
v.
EVERLAST MASONRY, INC., et al., Defendant.

Civil Action No. 09-cv-11290.
Nov. 16, 2009.

Amy E. Bachelder, George H. Kruszewski, Sachs Waldman, Detroit, MI, for Plaintiffs.

Anne-Marie Vercruysse Welch, Daniel J. Bretz, Clark Hill, Detroit, MI, Stanley C. Moore, III, Plunkett & Cooney, Bloomfield Hills, MI, for Defendant.

OPINION AND ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO COMPEL DISCOVERY (DOCKET NO. 23)

MONA K. MAJZOUB, United States Magistrate Judge.

*1 This matter comes before the Court on Plaintiffs' Motion to Compel Discovery filed on September 16, 2009. (Docket no. 23). Defendants did not file a response. The parties filed an Amended Joint Statement Of Resolved And Unresolved Issues Regarding Discovery With Respect To Defendant DRKK Development, LLC on November 9, 2009. (Docket no. 31). The parties filed an Amended Joint Statement of Resolved And Unresolved Issues Regarding Discovery With Respect to Defendant Everlast Masonry, Inc., on November 10, 2009. (Docket no. 32). This matter has been referred to the undersigned for decision

pursuant to 28 U.S.C. § 636(b)(1) (A). (Docket no. 24). The Court disposes with oral argument on this Motion. E.D. Mich. LR 7.1(e). The matter is now ready for ruling.

Plaintiffs served each of the two Defendants with document requests on July 9, 2009. (Docket no. 23-3, 23-4). Plaintiffs agreed to two extensions of time to respond, first to August 24, 2009, then to September 4, 2009. (Docket no. 23). Defendants produced written responses on September 8, 2009. (Docket nos. 23-5, 23-6). Plaintiffs ask the court to compel access to the requested records and order Defendants to pay attorney fees and costs incurred in bringing this motion. (Docket no. 23). According to the Joint Statements the following issues remain: As to Defendant DRKK Development (DRKK) Request to Produce Nos. 1 and 9(A); as to Defendant Everlast Masonry, Inc. (Everlast), Request to Produce No. 11; and as to both Defendants, redacted information on financial documents produced by Defendants.

A. The Requests At Issue Are Relevant

Plaintiffs may "obtain discovery of any non-privileged matter that is relevant to any party's claim or defense," and "[r]elevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed.R.Civ.P. 26(b)(1). Despite a few boilerplate objections by Defendants to some of the Requests as "irrelevant" all of the requests at issue are relevant to the issue of whether the Defendant companies are alter egos or otherwise one and the same. To the extent that either Defendant objects that Plaintiffs' Requests are overbroad, oppressive or harassing, they have provided no specific information to support the objections and the Court finds that the boilerplate objections are without merit.

B. Defendants' Responses That They Are In The Process of Obtaining The Documents

The issue with Defendant DRKK's responses to

Not Reported in F.Supp.2d, 2009 WL 3837147 (E.D.Mich.)
(Cite as: 2009 WL 3837147 (E.D.Mich.))

Request to Produce No. 1 and 9(A) and Defendant Everlast's response to Request No. 11 arises from their non-committal written responses indicating that each Defendant is still attempting to procure the responsive documents and will produce them when they are available, without providing further information regarding their status.

Plaintiffs may serve a request to produce "items in the responding party's possession, custody, or control." *Fed.R.Civ.P. 34(a)(1)*. "The word 'control' is to be broadly construed. A party controls documents that it has the right, authority, or ability to obtain upon demand." *Scott v. AREX, Inc.*, 124 F.R.D. 39, 41 (D.Conn.1989). Defendants' responses are insufficient. Defendants have already had far more time to produce the documents than the thirty days allowed pursuant to *Rule 34(b)(2)(A), Fed.R.Civ.P.* The Court will order each Defendant to produce all responsive documents within its possession, custody or control by a date certain and to amend each of the responses to state that it has produced all of the responsive documents within its possession, custody or control. In light of the ambiguity of the Defendants' responses as to whether or not documents exist and what steps were or are being taken to identify and procure them, the Court will also order Defendants' counsel to each produce an affidavit as set forth below stating what steps were taken to identify, locate and produce the responsive documents, including listing dates and places where documents were sought.

C. Production of Redacted Documents

*2 Plaintiffs argue that both Defendants have produced one or more redacted documents in their productions of financial documents in response to Request To Produce No. 1. Plaintiffs argue that no privilege applies and neither Defendant produced a privilege log or otherwise complied with *Rule 26(b)(5), Fed.R.Civ.P.* Plaintiffs characterize the information Defendant Everlast redacted as dollar amounts and descriptions of expenses related to legal fees. In the Joint Statements Defendant Everlast argues that the redacted information is irrelev-

ant. Plaintiffs characterize the information Defendant DRKK redacted as the name of a recipient for a check that Defendant argues was for legal fees. Neither Defendant raised any objections in its written responses to Plaintiffs' Document Request and neither Defendant filed a response to Plaintiffs' motion.

"As a general rule, failure to object to discovery requests within the thirty days provided by *Rules 33 and 34* 'constitutes a waiver of any objections.'" *Carfagno v. Jackson Nat'l Life Ins.*, 2001 U.S. Dist. LEXIS 1768 *3, 2001 WL 34059032 (W.D.Mich.2001) (no exception for work product and attorney-client material under the waiver). The requested information and documents, including the redacted name of the recipient of a legal fees check and the dollar amounts and descriptions of expenses, are relevant to the issue of whether the Defendants are alter-egos. *See generally N.L.R.B. v. Midwest Precision Heating and Cooling, Inc.*, 408 F.3d 450, 459 (8th Cir.2005) (The court noted in its alter-ego analysis that Midwest Air Conditioning "still uses the same accountant, lawyer, and payroll provider that Precision used."). Defendants Everlast and DRKK waived any objections or privilege, failed to produce a privilege log and did not otherwise move for protection of the requested material. The Court will order Defendants to produce all responsive documents in full, without redaction. The Court will deny Plaintiffs' request for attorneys fees and costs. *Fed.R.Civ.P. 37(5)(A)(ii), (iii)*.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Compel Discovery (docket no. 23) is **GRANTED** in part and on or before November 30, 2009 Defendant DRKK will produce all documents responsive to Request to Produce Nos. 1 and 9(A) in full without redaction and will amend its written responses to the same to state whether it has produced all responsive documents within its possession, custody or control and Defendant Everlast will produce all documents responsive to Request to Produce Nos. 1 and 11 in full without redaction and will amend its written responses to the

Not Reported in F.Supp.2d, 2009 WL 3837147 (E.D.Mich.)
(Cite as: 2009 WL 3837147 (E.D.Mich.))

same to state whether it has produced all responsive documents within its possession, custody or control.

IT IS FURTHER ORDERED that to the extent that either Defendant responds that it has not produced all responsive documents within its possession, custody or control, counsel for that Defendant will serve with its amended Responses an affidavit setting forth the steps taken to identify and procure the remaining responsive documents, including the time, manner and place(s) where documents were sought.

***3 IT IS FURTHER ORDERED** that Plaintiffs' request for attorneys fees and costs is denied. [Fed.R.Civ.P. 37\(a\)\(5\)\(A\)\(ii\) and \(iii\)](#).

NOTICE TO THE PARTIES

Pursuant to [Fed.R.Civ.P. 72\(a\)](#), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under [28 U.S.C. § 636\(b\)\(1\)](#).

E.D.Mich.,2009.
Bricklayers Pension Trust Fund-Metropolitan Area
v. Everlast Masonry, Inc.
Not Reported in F.Supp.2d, 2009 WL 3837147
(E.D.Mich.)

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Slip Copy, 2010 WL 3927728 (E.D.Mich.)
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Only the Westlaw citation is currently available.

This decision was reviewed by West editorial staff and not assigned editorial enhancements.

United States District Court,
E.D. Michigan,
Southern Division.
In re DOW CORNING CORPORATION, Debtor.
(LMI Administrative Application).

No. 95-CV-20512-DT.
June 15, 2010.

ORDER REGARDING VARIOUS DISCOVERY MOTIONS

DENISE PAGE HOOD, District Judge.

I. INTRODUCTION

*1 This matter is before the Court on eight discovery-related motions filed by both parties. Briefs were filed and oral arguments held on the matter.

Thirty (30) Certain Underwriters at Lloyd's, London and Certain London Market Insurance Companies (collectively, London Market Insurers ("LMI Claimants")) filed an Application for Allowance and Payment of its Administrative Expense Claim filed with the Court on August 12, 2004 under § 503(B) of the Bankruptcy Code, 11 U.S.C. § 503(b). This Administrative Claim is in an amount not less than \$91.2 million dollars, plus interest. Each LMI Claimant seeks partial reimbursement under a "clawback" provision in the 1995 Settlement Agreement with Dow Corning Corporation ("Dow Corning") for settlement payments that they made to resolve Dow Corning's insurance coverage lawsuit for breast implant liabilities.

Dow Corning filed an Objection to the Application and a Motion to Dismiss on August 17, 2005 claiming that the Application was not ripe for judicial determination and failed to state a claim upon which relief can be granted. The Court denied the motion in an Order dated June 18, 2007.

On June 27, 2007, the LMI Claimants filed an Amended Application and the matter proceeded to discovery. In an Order dated October 3, 2008, the Court granted Dow Corning's motion regarding discovery of the "leaders" and certain four "followers." (10/3/08 Order, p. 7) As to the Reinsurance-Related Discovery, the Court granted Dow Corning's motion to compel the production of the reinsurance documents. (10/3/08 Order, pp. 8-9) The Court took under advisement Dow Corning's Motion to Compel Production of All Documents Relating to the Settlement Negotiations and the Settlement Agreement At Issue (Doc. Nos.29935, 29948) because the LMI Claimants invoked Section VII.B of the Settlement Agreement-the non-waiver provision. The Court ordered *in camera* production of the documents the LMI Claimants claimed were privilege relating to the settlement negotiations (in addition to the documents the LMI Claimants submitted to the Court *in camera* during oral arguments).

After more discovery issues, the Court granted Dow Corning's Motion to Compel Compliance with the October 3, 2008 Court Order and for Entry of Revised Scheduling Order. The Court also ordered the LMI Claimants submit to the Court *in camera* all documents they seek to withhold from Dow Corning based on attorney-client privilege and/or work product (or any other privilege or theory). (1/30/09 Order, p. 11)

The Court heard oral arguments on the discovery motions on June 12, 2009, along with three summary judgment motions filed by the parties. This order addresses the discovery-related motions and the Court's ruling on the summary judgment motions are set forth in a separate order.

II. DISCOVERY MOTIONS

A. Dow Corning's Motion to Compel Compliance with the Court's October 3, 2008 and January 30, 2009 Orders by Requiring LMI

Slip Copy, 2010 WL 3927728 (E.D.Mich.)

(Cite as: 2010 WL 3927728 (E.D.Mich.))

Claimants to Produce Responsive 1999 Reinsurer Communication

*2 Dow Corning argues that the Court has issued two orders requiring the LMI Claimants to produce all responsive communications with reinsurers or reinsurance intermediaries, regardless of whether any claim of privilege otherwise might have been asserted. In a February 20, 2009 letter to the Court, the LMI Claimants sought the Court's advice as to whether they may withhold as privileged a responsive 1999 document that was shared with a reinsurer. The LMI Claimants also sought guidance as to an August 31, 2000 report pursuant to an April 3, 2009 letter to the Court. Dow Corning claims that the Court has ordered production of the documents twice and the documents should be produced immediately.

In response, the LMI Claimants claim that Dow Corning's motion is yet another effort by Dow Corning to use broad language of the Court's Orders to obtain a document that plainly was not within the scope of those orders. The LMI Claimants argue that Dow Corning did not request or move to compel production of documents containing attorney work product concerning the development of this claim, as opposed to documents relating to the 1994-95 settlement negotiations and agreement. The LMI Claimants argue this Court's Orders do not require that the documents be produced. The LMI Claimants claim the law provides that the LMI Claimants and their reinsurers have a common interest in the reimbursement claim and the December 2, 1999 and August 31, 2000 market reports did not lose their privileged status when shared with reinsurers, citing *Front Royal Ins. Co. v. Gold Players, Inc.*, 187 F.R.D. 252 (W.D.Va.1999) and *Allendale Mut. Ins. v. Bull Data Sys., Inc.*, 152 F.R.D. 132 (N.D.Ill.1993).

Dow Corning replies that it moved to compel communications between the LMI Claimants and their reinsurers concerning the Settlement Agreement in its November 30, 2007 motion. Given that the LMI Claimants acknowledge that the December

1999 and August 2000 documents now at issue were communicated to at least one reinsurer and relates to the LMI Claimants' purported "reimbursement rights under the settlement agreement", Dow Corning argues that the document is responsive to Dow Corning's prior motions to compel.

The Court finds that the December 1999 and August 2000 documents now at issue were subject to this Court's prior orders and must be produced by the LMI Claimants to Dow Corning. As to the LMI Claimants' work-product privilege argument, the Court finds that the privilege does not apply to the December 1999 document since the LMI Claimants did not file the reimbursement claim until 2004.

The work-product doctrine protects an attorney's trial preparation materials from discovery to preserve the integrity of the adversarial process. *See Hickman v. Taylor*, 329 U.S. 495-510-14 (1947). The work-product doctrine is a procedural rule under Rule 26 of the Rules of Federal Procedure. *In re Powerhouse Licensing, LLC*, 441 F.3d 467, 472 (6th Cir.2006). Rule 26(b)(3) protects documents prepared in anticipation of litigation or for trial. *Fed.R.Civ.P. 26(b)(3)*. Two questions are asked to determine whether a document has been prepared in anticipation of litigation: 1) whether the document was prepared "because of" a party's subjective anticipation of litigation, as contrasted with ordinary business purpose; and 2) whether that subjective anticipation was objectively reasonable. *United States v. Roxworthy*, 475 F.3d 590, 594 (6th Cir.2006). The burden is on the party claiming protection to show that anticipated litigation was the "driving force behind the preparation of each requested document." *Id.* at 595.

*3 The LMI Claimants, acknowledging that the December 1999 documents relate to the LMI Claimants' alleged reimbursement rights under the Settlement Agreement, cannot show that the December 1999 documents were prepared in anticipation of the instant reimbursement claim filed in 2004. The interpretation of the Settlement Agree-

Slip Copy, 2010 WL 3927728 (E.D.Mich.)
(Cite as: 2010 WL 3927728 (E.D.Mich.))

ment containing the reimbursement provision is the main issue in this litigation. The LMI Claimants have not carried their burden to show that the 2004 reimbursement claim litigation was the driving force behind the preparation of the December 1999 documents. Dow Corning's Motion to Compel Compliance with the Court's October 3, 2008 and January 30, 2009 Orders by Requiring LMI Claimants to Produce Responsive 1999 Reinsurer Communication is granted.

B. Dow Corning's Motion to Compel Compliance with the Court's October 3, 2008 and January 30, 2009 Orders Regarding Reinsurance-Related Information

This discovery motion is related to the motion above. In its October 3, 2008 Order, the Court directed the LMI Claimants to produce to Dow Corning any communications between the LMI Claimants and their reinsurers with respect to the Settlement Agreement. (10/3/08 Order, pp. 7-9, 14) The Court granted Dow Corning's Motion to Compel with regards to the reinsurance documents in its January 30, 2009 Order. (1/30/09 Order, p. 8) Dow Corning argues that the documents relating to market reports labeled as "May be available to reinsurers" should also be produced. Dow Corning claims that some market reports are expressly labeled "Should not be shown to reinsurers" whereas some are labeled "May be made available to reinsurers." Dow Corning claims that the LMI Claimants have taken the position that they need only produce market reports where there is evidence, beyond the four corners of a market report, affirmatively indicating that a particular report was in fact shared with reinsurers. Dow Corning argues that with regard to the market reports labeled "May be made available to reinsurers" the LMI Claimants cannot be certain that these reports were not in fact shared with reinsurers.

In response, the LMI Claimants claim that Dow Corning is raising a new argument-whether the labeling of a document can cause it to lose its privileged status. The LMI Claimants argued that the

mere presence of the "reinsurer-available" legend on a document does not eliminate the applicable privileges. The LMI Claimants argue that there is no basis in law to find a waiver of the attorney-client privilege or work product doctrine simply because a document bears a legend indicating that it could be shared with a reinsurer. The LMI Claimants state that they have reasonably determined which documents were shared with a reinsurer. The LMI Claimants claim they have produced all such reports. The LMI Claimants submitted affidavits to support their argument that even though documents contain "reinsurer available" legends, it does not mean that such a report was shared with a reinsurer. The affidavits also state that the "reinsurer available" reports are not provided to reinsurers as a matter of course and that many "reinsurer available" reports are never shared with any reinsurer.

*4 Dow Corning replies that since its motion was filed, the LMI Claimants produced additional market reports and it now appears only two "reinsurer available" market reports are in dispute, dated September 1, 1995 and February 22, 1996. These two documents (and others which Dow Corning is not aware of to date) must be produced, according to Dow Corning. Dow Corning claims the LMI Claimants cannot have "reasonably determined" that these two "reinsurer available" reports were not communicated to any reinsurers. The September 1, 1995 report indicates in a cover letter that "this report has been produced so that it may be made available to reinsurers." (Dow Corning Motion, Ex. M) Dow Corning argues that the LMI Claimants have offered no evidence to justify a conclusion that of the 73 London Market insurers who settled with Dow Corning, not a single one shared the September 1, 1995 report with at least one reinsurer or reinsurance intermediary. The LMI Claimants have not indicated or submitted any affidavit to show that a report labeled "Should not be shown to brokers, reinsurers, auditors, or any other parties" and reports labeled "May be sent to" or "Made available to reinsurers" were not shown to

Slip Copy, 2010 WL 3927728 (E.D.Mich.)
(Cite as: 2010 WL 3927728 (E.D.Mich.))

or intended to be shared with third parties.

The work product privilege doctrine was addressed above and the same analysis applies. As to the attorney-client privilege doctrine, Michigan law has long recognized the common-law privilege extending to communications between a client and an attorney. *Sterling v. Keiden*, 162 Mich.App. 88, 412 N.W.2d 255 (1987). Generally, the attorney-client privilege is waived by voluntary disclosure of private communications by an individual or corporation to third parties. *In re Columbia/HCA Healthcare Corp., Billing Practices Litigations*, 293 F.3d 289, 294 (6th Cir.2002). A client may waive the privilege by conduct which implies a waiver of the privilege or a consent to disclosure. *Id.* The burden of establishing the existence of the privilege rests with the person asserting it. *United States v. Dakota*, 197 F.3d 821, 825 (6th Cir.2000). Claims of attorney-client privilege are narrowly construed because the privilege reduces the amount of information discoverable during the course of a lawsuit. *United States v. Collins*, 128 F.3d 313, 320 (6th Cir.1997). The privilege applies only where necessary to achieve its purpose and protects only those communications necessary to obtain legal advice. *In re Antitrust Grand Jury*, 805 F.2d 155, 162 (6th Cir.1986). Litigants cannot hide behind the privilege if they are relying upon privileged communications to make their case. “[T]he attorney-client privilege cannot at once be used as a shield and a sword.” *In re Lott*, 139 Fed. Appx. 658, 2005 WL 1515367 (6th Cir. Jun.22, 2005) (unpublished) (citing *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir.1991)).

In this case, the two documents at issue must be produced. As noted previously, the main issue in this litigation is the interpretation of the Settlement Agreement at issue, specifically the reimbursement provision. The Court has previously ruled that Dow Corning is entitled to information given to the reinsurers. Although the LMI Claimants assert that they are “reasonably” certain the two documents at issue were not shared with reinsurers, the fact that the

documents are labeled “reinsurer available” or “may be sent to” or “made available to reinsurers” shows that these documents were not considered private between a client and an attorney. The LMI Claimants apparently knew how to label documents-whether it could or should be shared or not with reinsurers. The Court finds that the attorney-client privilege, if any, was waived as to the two market reports at issue and grants Dow Corning's Motion to Compel Compliance with the Court's October 3, 2008 and January 30, 2009 Orders Regarding Reinsurance-Related Information.

C. Dow Corning's Motion to Compel LMI Claimants to Provide Release-Adjustment Discovery

*5 Dow Corning seeks an order compelling the LMI Claimants to provide release-adjustment discovery as required by the Settlement Agreement. Dow Corning claims that the clawback provision sets forth a requirement that any “Released Subject Matter under those Subject Contracts of Insurance affected by any such reimbursement will be narrowed accordingly.” (Reimbursement Prov., § VI.D) Dow Corning's First Set of Interrogatories requested that each applicant seeking reimbursement identify, with respect to the amount of reimbursement sought, “the release adjustment that each applicant would make, and the method used in calculating each applicant's release adjustment.” (DCC Int. No. 1) Interrogatory No. 10 required the LMI Claimants to “describe how you intend to structure your release adjustment of Dow Corning's insurance claims, as required by Section VI.D of the Settlement Agreement if you secure a reimbursement under the clawback provision.” (DCC Int. No. 10) Dow Corning claims the LMI Claimants objected to and refused to respond to the requests, taking the position that the requests sought were irrelevant and premature.

The LMI Claimants respond that the information requested is not relevant to the “only” claim in this case, which is the LMI Claimants' claim for reimbursement. The LMI Claimants assert that how

Slip Copy, 2010 WL 3927728 (E.D.Mich.)

(Cite as: 2010 WL 3927728 (E.D.Mich.))

the insurance coverage, or releases, might be adjusted “after” the Court decides the claim is “irrelevant to the only issues presented in this case—whether the London Market Insurers are entitled to reimbursement and in what amount.” (LMI Resp., p. 1) The LMI Claimants further argue that the motion seeks information that does not exist until the amount of reimbursement is known. The LMI Claimants contend that Dow Corning has not filed a counterclaim for release adjustment or a release adjustment defense. Finally, the LMI Claimants claim that Dow Corning’s discovery request borders on harassment because Dow Corning is fully aware that the releases cannot be adjusted until there is a reimbursement amount.

In its reply, Dow Corning argues that the LMI Claimants seek to avoid their obligation to provide release-adjustment discovery by asserting that the matter before the Court is solely about reimbursement and that the release adjustment has nothing to do with the LMI Claimants’ claim for reimbursement, in addition to the LMI Claimants’ contention that Dow Corning has not asserted a counterclaim or a release adjustment defense. Dow Corning claims that the plain language of the clawback provision forecloses both arguments. Dow Corning notes that the release adjustment provision is contained in the same paragraph as the request for reimbursement sought by the LMI Claimants. Specifically, the provision states that “[t]he RELEASE Subject matter under those Subject Contracts of Insurance affected by any such reimbursement will be narrowed accordingly. Should the Parties fail to agree upon a reimbursement amount and the adjustment in the Released Subject Matter, the Parties shall invoke the dispute resolution procedures set forth in Section VI.B., above.” (Settlement Agreement, VI.D.) Dow Corning argues that the LMI Claimants cannot selectively invoke only part of the clawback provision while ignoring other requirements in the provision.

*6 Rule 26(b) (1) of the Rules of Civil Procedures provides that “parties may obtain discovery re-

garding any non privileged matter that is relevant to any party’s claim or defense.” Fed.R.Civ.P. 26(b)(1). Fed.R.Civ.P. 33, 34, and 36, respectively, authorize a party to serve on another party interrogatories, requests for production, and requests for admission on another party. A discovery request must meet the threshold relevancy test. See Fed.R.Civ.P. 26(b)(1). Discovery is limited if the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive. Fed.R.Civ.P. 26(b)(2)(C). The Sixth Circuit has held that the scope of examination permitted under Rule 26(b) is broader than that permitted at trial. *Mellon v. Cooper-Jarrett, Inc.*, 424 F.2d 499, 501 (6th Cir.1970). The test is whether the line of interrogation is reasonably calculated to lead to the discovery of admissible evidence. *Id.* at 500-501. Relevance for discovery purposes is extremely broad. *Miller v. Fed. Express Corp.*, 186 F.R.D. 376, 383 (W.D.Tenn.1999). The district court has broad discretion to control and restrict discovery where necessary to protect from abuse. See *Herbert v. Lando*, 441 U.S. 153, 177, 99 S.Ct. 1635, 60 L.Ed.2d 115 (1975).

As asserted by the LMI Claimants, “the only issues presented in this case—whether the London Market Insurers are entitled to reimbursement and in what amount.” The reimbursement provision expressly states, “[t]he Released Subject matter under those Subject Contracts of Insurance affected by any such reimbursement will be narrowed accordingly.” (Settlement Agreement, VI.D.) The next sentence states that if the parties fail to agree “upon a reimbursement amount and the adjustment in the Released Subject Matter, the Parties shall invoke the dispute resolution procedures set forth in Section VI.B., above.” (*Id.*) These two sentences in the reimbursement provision, with the language “affected” and considering the reimbursement amount “and” the adjustment together, evidences that the parties intended any adjustment in the Released Subject Matter to be determined with the reimbursement amount. Dow Corning’s interrogator-

Slip Copy, 2010 WL 3927728 (E.D.Mich.)
 (Cite as: 2010 WL 3927728 (E.D.Mich.))

ies relating to the release adjustment are relevant to the LMI Claimants' claim for reimbursement. As noted above, "the only issues presented in this case—whether the London Market Insurers are entitled to reimbursement and in what amount." Dow Corning's Motion to Compel LMI Claimants to Provide Release-Adjustment Discovery is granted.

D. LMI's Motion to Compel Production of Documents Over Which Dow Corning has Waived Attorney-Client Privilege and/or Work Product Protection

1. Waiver

The LMI Claimants seek production of non-specific documents over which they claim Dow Corning has waived attorney-client privilege and/or work product protection. The LMI Claimants identify three areas in which they claim Dow Corning has made such a waiver. First, the LMI Claimants claim that Dow Corning has repeatedly waived the attorney-client privilege through the testimony of its outside counsel. The LMI Claimants' motion focused on Scott Gilbert's 1995 testimony, before the Bankruptcy Court, on whether the Settlement Agreement between the parties was reasonable. The LMI Claimants briefly mention the deposition testimony of Marialuisa Galozzi and footnotes deposition testimony of John Rigas and Edward Rich, negotiators on behalf of Dow Corning. Second, the LMI Claimants assert Dow Corning waived the work product protection regarding the insurance allocations prepared by Sedgwick James for Dow Corning because they were shared with the Tort Claimants' Committee and the London Market Insurers. Finally, the LMI Claimants claim that Dow Corning waived the privilege by providing the Tort Claimants' Committee a draft of Dow Corning's demand letter to the insurers.

*7 Dow Corning responds that it did not waive any attorney-client privilege when Mr. Gilbert or Ms. Galozzi testified at their depositions. Dow Corning argues that the Sedgwick James documents are not work product, therefore, sharing these docu-

ments with the Tort Claimants' Committee and the London Market Insurers did not waive any privilege. As to sending a letter to the Tort Claimants' Committee regarding a draft letter to its insurers, Dow Corning does not claim a privilege over the draft letter or any letter sent to its insurers, therefore, sharing this document with the Tort Claimants also does not constitute a waiver of any privilege.

The [Federal Rules of Evidence Rule 502](#) provides the extent of a waiver of an attorney-client or work-product communication or information if such a waiver has been found. The notes to the rule provide that the rule "is not intended to displace or modify federal common law concerning waiver of privilege or work product where no disclosure has been made" and is not intended to overturn precedent dealing with implied waiver by the assertion of an advice of counsel defense. *See, Henry v. Quicken Loans, Inc.*, 263 F.R.D. 458, 465 (E.D.Mich.2008). Before applying [Rule 502](#), a determination must first be made whether a waiver of the privilege or work product has occurred. A privilege may be waived expressly or by implication. *Id.* at 466. Generally, the attorney-client privilege is waived by voluntary disclosure of private communications by an individual or corporation to third parties. *In re Columbia/HCA Healthcare Corp. Billing Practices Lit.*, 293 F.3d 289, 294 (6th Cir.2002). A client may waive the privilege by conduct which implies a waiver of the privilege or a consent to disclosure. *Id.* The privilege is waived when a client attacks the quality of an attorney's advice or when a party raises a defense based on advice-of counsel. A claim or defense which places at issue the subject matter of a privileged communication in such a way that a party holding the privilege will be forced to draw upon the privileged material at trial in order to prevail waives the privilege. *In re Lott*, 424 F.3d 446, 453-54 (6th Cir.2005). "[I]t is the content of the privileged communications that is used as a sword." *Ross v. City of Memphis*, 423 F.3d 596, 604-05 (6th Cir.2005). Implied waivers are to be construed narrowly and a court "must impose a waiver no broader than needed to ensure the

Slip Copy, 2010 WL 3927728 (E.D.Mich.)

(Cite as: 2010 WL 3927728 (E.D.Mich.))

fairness of the proceedings before it.” *In re Lott*, 424 F.3d at 453-54. Merely filing a suit that places a party's state of mind at issue is insufficient to constitute a waiver of the attorney-client privilege. *Henry*, 263 F.R.D. at 467. The client must take an affirmative step to waive the privilege such as when the client asserts a claim or defense and attempts to prove that claim or defense by disclosing or describing an attorney-client communication. *Id.* at 468 (citation omitted). An insurance company does not waive the attorney-client privilege by offering the testimony of a former attorney to show that the insurance company had attempted to settle the insured's claim after a suit had been filed as rebuttal evidence to the insured's allegations of bad faith. *Id.* However, “the attorney client privilege cannot at once be used as a shield and a sword.” *Id.* (citation omitted). If a client testifies on direct that certain actions were legal, conversations with counsel would directly be relevant in determining the extent of the client's knowledge and his intent. The client cannot later on cross examination assert a privileged communication on matters reasonably related to those developed on direct. *Id.* at 469. When a party asserts a defense of good faith or reasonableness and affirmatively offers testimony that the party consulted with an attorney as factual support for the defense, the client waives the attorney client privilege on the narrow subject matter of those communications. *Id.*

2. Scott Gilbert

*8 The LMI Claimants argue that on numerous occasions at a 1995 hearing before the Bankruptcy Court and in Mr. Gilbert's deposition taken on February 17, 2009, he waived the attorney-client privilege. The LMI Claimants seek a broad and blanket subject waiver of the privilege as to Dow Corning's intent regarding the reimbursement provision. Dow Corning argues that there was no waiver because Dow Corning's counsel explicitly indicated on the record at the 1995 hearing and during the 2009 deposition that Dow Corning was not waiving any privilege.

The Court's review of the 2009 deposition of Mr. Gilbert and the passages cited by the LMI Claimants during the 1995 hearing reveals that Dow Corning did not waive the attorney client privilege. Merely placing Dow Corning's state of mind on the issue of the “assumed amount” set forth on the reimbursement provision does not constitute a waiver of the attorney-client communication. *Henry*, 263 F.R.D. at 267. Construing Mr. Gilbert's testimony during the 1994 hearing narrowly as to waiver, the Court cannot find that Mr. Gilbert went beyond what was necessary for the Bankruptcy Court to make a decision as to the reasonableness of the settlement between Dow Corning and its insurers. The Bankruptcy Court noted that lawyer-negotiator testimony on the reasonableness of a settlement “happens to be the primary way settlements get approved in Court” and “that would be entirely appropriate and as I understand it, routine.” (8/10/95 Bankr.Hrg. at 62-63) As to Mr. Gilbert's 2009 deposition, Mr. Gilbert did not affirmatively testify as to his communications with Dow Corning or Dow Corning's communications to him, other than noting his understanding of the numbers upon which the parties had agreed. On several occasions, Dow Corning's counsel asserted the attorney client communications privilege or work product protection. (2/17/09 Gilbert Dep., at 8-9, 20-30, 33-34, 42, 69, 76-77, 91-94, 97-98, 120, 136, 223-24, 248-49, 251-56, 260-62, 268-73, 278-79, 281-82, 318-19) It is clear from Mr. Gilbert's testimony that Dow Corning did not intentionally waive its privilege nor that Mr. Gilbert affirmatively offered testimony regarding the communications between himself and Dow Corning. No privilege was waived when Mr. Gilbert testified to his understanding as to the amount at issue set forth in the reimbursement clause and as to the negotiations and communications between he and the insurers regarding the reimbursement clause.

3. Marialuisa Gallozi

The February 29, 2009 deposition testimony of Ms. Gallozi also shows that Dow Corning asserted the attorney/client privilege and work product pro-

Slip Copy, 2010 WL 3927728 (E.D.Mich.)

(Cite as: 2010 WL 3927728 (E.D.Mich.))

tection throughout the deposition. (Ex. 15, DCC's Resp.) The Court finds that Dow Corning did not intentionally waive its privilege or any work product information during Ms. Gallozi's deposition. The Court also finds that Ms. Gallozi did not affirmatively testify to communications she had with Dow Corning.

4. John Rigas

*9 A review of the few pages of Mr. Rigas' testimony submitted by the LMI Claimants shows he did not reveal any privileged information. (Ex. D, LMI's motion) Mr. Rigas, as a representative of Dow Corning, testified as to what Dow Corning's assumptions were during the negotiations. Nothing in his deposition offered affirmative testimony regarding any privileged communications. He was not acting as counsel during the negotiations but was the business financial representative for Dow Corning.

5. Edward Rich

During the 1995 negotiations, Mr. Rich was Dow Corning's Treasurer, not its counsel. (Ex. C, 2/24/09 Rich Dep., at 169) The few pages submitted by the LMI Claimants in support of their motion shows that Mr. Rich was testifying as to his personal involvement in the negotiations and drafting of the Settlement Agreement. (*Id.*, at 82) The questions posed by the LMI Claimants' counsel focused on discussions between Dow Corning and the LMI Claimants' counsel regarding the settlement negotiations. (*Id.* at 162) It is clear from the testimony that Mr. Rich was not going to discuss privileged communications he had with Dow Corning's counsel. (*Id.* at 180) Dow Corning's counsel also asserted the attorney/client privilege during Mr. Rich's deposition. (*Id.* at 170). Mr. Rich did not offer any affirmative testimony waiving any privilege or work product protection.

6. Sedgwick James Documents

The LMI Claimants argue that Dow Corning waived its privilege and work product protection by disclosing materials generated by Sedgwick James to the Tort Claimants' Committee and the LMI

Claimants. In response, Dow Corning claims it never and does not now assert any privilege as to the documents generated by Sedgwick James. Dow Corning expressly asserts that the documents prepared by Sedgwick James are not work product.

The Court finds that because Dow Corning does not assert work product protection of the documents generated by Sedgwick James, Dow Corning has not waived any privilege or work product protection by disclosing the documents to the Tort Claimants' Committee and to the LMI Claimants.

7. Draft Letter to Insurers

The LMI Claimants argue that Dow Corning waived any privilege by disclosing to the Tort Claimants' Committee a draft letter addressed to the insurers regarding Dow Corning's demand. In response, Dow Corning argues that it does not assert any privilege over the draft letter to the insurers since the letter is not work product or subject to any attorney-client privilege. Because Dow Corning does not assert any privilege or work product protection to a letter to be sent to the insurers, Dow Corning has not waived any privilege or work product protection by disclosing a copy of the draft letter to the Tort Claimants' Committee.

For the reasons set forth above, the LMI Claimants' Motion to Compel Production of Documents Over Which Dow Corning has waived the Attorney-Client Privilege and/or Work Product Protection is denied, the Court finding that Dow Corning has not waived the privilege or protection.

E. LMI Claimants' Motion to Compel Production of Communications and Documents Shared with Third Parties

*10 The LMI Claimants seek an order directing Dow Corning to search for and produce: 1) non-privileged communications and documents shared with third parties concerning the reimbursement clause and subjects related to it; 2) non-privileged communications and documents shared with third parties concerning the claim; and 3) privileged communications and documents Dow Corning

Slip Copy, 2010 WL 3927728 (E.D.Mich.)

(Cite as: 2010 WL 3927728 (E.D.Mich.))

shared with third parties. (Motion, p. 15) The LMI Claimants state that in 2006, they requested certain documents from Dow Corning. The LMI Claimants now claim that on February 24, 2009, they learned that Dow Corning may have documents on the critical issues in the case that it has not produced or has not searched for or listed on a privilege log.

In response, Dow Corning claims the LMI Claimants waited until February 2009, after five depositions had been taken, to raise for the first time an issue about Dow Corning's production of communications with non-parties. Dow Corning claims that it conducted an extensive search for documents responsive to the LMI Claimants' discovery requests in 2007 and made a substantial document production in response to the requests. Dow Corning withheld two privileged communications regarding the Settlement Agreement that were shared with its owners, the Dow Chemical Company and Corning, Incorporated and included these two communications on its privilege log. The LMI Claimants did not raise any objections regarding these two communications until the instant motion filed in 2009. As to the documents the LMI Claimants assert they recently learned about, Dow Corning claims they searched in 2009 for any documents responsive to the LMI Claimants' new requests. Dow Corning states no documents which have not been produced were found in its search in 2009. At the hearing, the Court instructed Dow Corning to submit an affidavit addressing the search and such affidavit was submitted to the Court on July 10, 2009 describing Dow Corning's efforts to search the requested documents. "It is well established that in those situations in which the documents sought to be produced are not in existence, a request to produce must be denied." *In re Air Crash Disaster at Detroit Metropolitan Airport*, 130 F.R.D. 641, 646 (E.D.Mich.1989).

With regards to the LMI Claimants' request for communications and documents which the LMI Claimants learned about in 2009, Dow Corning has submitted an affidavit detailing the search it con-

ducted in 2007 and 2009. Dow Corning has indicated no documents exist, other than the documents it had already produced in response to LMI Claimants' discovery requests back in 2007. The Court is satisfied based on Dow Corning's response brief and the affidavit submitted that it has performed the appropriate searches in order to respond to the LMI Claimants' most recent document Requests.

Addressing the LMI Claimants' argument that Dow Corning should produce documents and communications, the Court notes the Sixth Circuit's "universal rule of law" that the parent and subsidiary share a community of interest, such that the parent, as well as the subsidiary, is the "client" for purposes of the attorney-client privilege. *See Crabb v. KFC Nat'l Management Co.*, 1992 WL 1321 (6th Cir. Jan.6, 1992) (unpublished) ("The cases clearly hold that a corporate 'client' includes not only the corporation by whom the attorney is employed or retained, but also parent, subsidiary and affiliate corporations.") (citation omitted); *Glidden Co. v. Jandernoa*, 173 F.R.D. 459, 472-73 (W.D.Mich.1997). An exception to the attorney-client privilege is the shareholder-fiduciary exception. *See Fausek v. White*, 965 F.2d 126 (6th Cir.2991). The exception is invoked by minority shareholders seeking to access corporate-attorney client communications in a suit vindicating shareholder interests. *Id.* at 130. Where the parent corporation has placed directors on the subsidiary board, corporate directors have access to corporate records and documents, including documents otherwise protected by the corporation's attorney-client privilege. *Glidden*, 173 F.R.D. at 473-74. Although Michigan law provides that an attorney for a corporation does not automatically have an attorney-client relationship with its shareholders and the privilege belongs to the client corporation, the attorney does have a fiduciary duty to the shareholders. *Id.* at 475. The existence of an attorney-client relationship merely establishes a *per se* rule that the lawyer owes fiduciary duties to the client but it does not end the inquiry of whether the attorney owes a duty to the

Slip Copy, 2010 WL 3927728 (E.D.Mich.)

(Cite as: 2010 WL 3927728 (E.D.Mich.))

shareholders. *Id.* Courts have repeatedly rejected attempts by members of a subsidiary board of directors from asserting the attorney-client privilege against the parent corporation, to which they owed fiduciary duties. *Id.* at 478.

*11 Given that Dow Corning has a fiduciary duty to its shareholders, it cannot assert the attorney-client privilege against its shareholders, Dow Chemical and Corning. Consequently, Dow Corning cannot waive the attorney-client privilege as to documents and communications Dow Corning's lawyers shared with Dow Corning's shareholders. Documents and communications disclosed by Dow Corning's counsel to its shareholders are not waived since the shareholders are not considered third parties for purposes of waiving the attorney-client privilege. The LMI Claimants liken a joint common privilege with their reinsurers which the Court has found does not exist and has ordered the LMI Claimants to produce the documents disclosed to their reinsurers. The LMI Claimants have not shown that they owe a fiduciary duty to the reinsurers and have in fact stated that the reinsurers were unrelated third parties. Dow Corning's shareholders are related and affiliated with Dow Corning. The Sixth Circuit has found that a corporation could not assert the attorney-client privilege against a 40% shareholder. In this case, Dow Chemical and Corning are each 50% shareholders of Dow Corning. Dow Corning cannot assert the attorney-client privilege against Dow Chemical and Corning and, therefore, cannot waive such a privilege on their behalf.

For the reasons set forth above, the Court denies the LMI Claimants' Motion to Compel the Production of Communications and Documents Shared with Third Parties.

F. LMI's Motion to Compel Response to Interrogatory No. 15 Regarding REIMBURSEMENT Methodology

The LMI Claimants seek to compel a response by Dow Corning to Interrogatory No. 15 which asks:

In the event that the total of the Allocated Expenses, Generic Expenses and Liability Payments attributable to Dow Corning Breast Implant Claims is finally determined to be materially less than the amount actually assumed by the London Market INSURERS in connection with their allocation of shares pursuant to the SETTLEMENT, explain how YOU believe the amount of reimbursement should be determined and/or calculated, what methodology or methodologies YOU believe should be used, the amount of reimbursement YOU believe would be due and how YOU arrived at that amount, broken down on both a policy-by-policy basis and claimant-by-claimant basis.

(Motion, Ex. 10, LMI's 5th Set of Interrogs., No. 15) The LMI Claimants argue that discovery of Dow Corning's reimbursement methodology is relevant and is not premature. The LMI Claimants further argue that Dow Corning has pled a defense and has time and time again in discovery responses and motion papers claimed as its theory that the LMI Claimants' methodologies are incorrect. The LMI Claimants assert that they are entitled to discovery on the main issue underlying the LMI Claimants' claim and the basis for Dow Corning's defense.

Dow Corning responds that it has adequately responded to the contention interrogatory at this stage in the litigation and any supplementation should not be required until fact and expert discovery from the LMI Claimants is complete. Dow Corning claims that the LMI Claimants had previously filed a motion to compel on this same issue which the Court denied without prejudice stating that Dow Corning adequately set forth its position as to why the LMI Claimants are not entitled to reimbursement and that after further discovery Dow Corning must supplement its responses. (10/3/08 Order, p. 12) Dow Corning supplemented its response on March 25, 2009. Even though the LMI Claimants have exceeded the limit on interrogatories set forth in Rule 33(a)(2), Dow Corning responded to Interrogatory No. 15 noting that no amount

Slip Copy, 2010 WL 3927728 (E.D.Mich.)
(Cite as: 2010 WL 3927728 (E.D.Mich.))

of reimbursement is due to the LMI Claimants. Dow Corning claims the LMI Claimants thereafter complained that Dow Corning failed to state “what methodology or methodologies” should be used to calculate any reimbursement that may be due and after a meet and confer session, the LMI Claimants filed the instant motion. Dow Corning asserts that the LMI Claimants have yet to produce discovery relevant to this issue, such as the allocation of shares and Dow Corning has not been able to take the depositions of the LMI Claimants' witnesses in order to further understand the LMI Claimants' proposed reimbursement methodology. Dow Corning further asserts that this issue is part of the expert discovery stage which has yet to occur in this proceeding.

*12 Rule 33 of the Rules of Civil Procedure provides that “an interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact.” Fed.R.Civ.P. 33(a)(2). Such interrogatories, known as “contention interrogatories,” serve legitimate and useful purposes, such as ferreting out unsupportable claims, narrowing the focus and extent of discovery, and clarifying the issues for trial. *Starcher v. Correctional Med. Sys., Inc.*, 144 F.3d 418, 421 n. 2 (6th Cir.1998). A court may postpone a response to contention interrogatories until discovery is closer to completion. “[B]ut the court may order that the interrogatory need not be answered until designated discovery is complete ...” Fed.R.Civ.P. 33(a)(2). The rule protects the responding party from being hemmed into fixing its position without adequate information. *Strauss v. Credit Lyonnais, S.A.*, 242 F.R.D. 199, 233 (E.D.N.Y.2007).

The Court finds that Interrogatory No. 15 is relevant to Dow Corning's defense that the LMI Claimants are not entitled to reimbursement and that the LMI Claimants' methodologies are in error. However, the LMI Claimants have the ultimate burden to show that they are entitled to a reimbursement under the reimbursement provision of the Settlement Agreement. Given that the LMI Claimants

have not provided the allocation of shares discovery and the depositions have yet to be taken of relevant LMI Claimants' witnesses on the issue of the LMI Claimants' reimbursement methodology, a supplemental response by Dow Corning is not required until after Dow Corning receives adequate information to rebut the LMI Claimants' reimbursement methodology. Dow Corning must then supplement its response. If Dow Corning claims that an expert is required to rebut the LMI Claimants' reimbursement methodology, then Dow Corning need not supplement its response until the expert discovery stage in this matter.

Although the LMI Claimants may have exceeded the required number of interrogatories under the Rules if subparts in their interrogatories were counted, as required by Rule 33(a)(1), Dow Corning waived its objections on this issue since it responded to Interrogatory No. 15. The Court notes that Rule 33(a)(1) requires that the parties either stipulate or seek an order from the Court to exceed the 25 interrogatories requirement.

The Court grants the LMI Claimants' Motion to Compel Response to Interrogatory No. 15 Regarding Reimbursement Methodology. However, Dow Corning need not supplement its response until discovery is complete regarding the LMI Claimants' reimbursement methodology or during the expert discovery stage, if experts are required.

G. LMI Claimants' Motion to Compel Dow Corning Corporation to Provide Discovery on Expenses that it Seeks to Include in Its Total Loss

1. Discovery Standard

The LMI Claimants seek an order compelling Dow Corning to provide full and complete responses to Request for Production of Documents No. 1 and Interrogatory Nos. 8, 9, 11 and 12. Specifically, the LMI Claimants seek discovery related to the portion of the reimbursement provision which states, “the total of the Allocated Expenses,

Slip Copy, 2010 WL 3927728 (E.D.Mich.)
(Cite as: 2010 WL 3927728 (E.D.Mich.))

Generic Expenses and Liability Payments attributable to Dow Corning Breast Implant Claims.” (Reimbursement Provision, § VI.D.) In response, Dow Corning claims it has sufficiently responded to the request and interrogatories and appropriately supplemented the responses.

*13 Rule 26(b)(1) provides that parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. Fed.R.Civ.P. 26(b)(1). The scope of discovery is traditionally quite broad. *Lewis v. ACB Business Services, Inc.*, 135 F.3d 389, 402 (6th Cir.1998). Discovery does have “ultimate and necessary boundaries.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S.Ct. 2380, 57 L.Ed.2d 253 (1978). A court need not compel discovery if the burden or expense of the proposed discovery outweighs its likely benefit. Fed.R.Civ.P. 26(b)(2)(iii).

2. Request for Document Production No. 1

The LMI Claimants submitted Document Request No. 1: “All DOCUMENTS RELATING to the GROUND UP LOSS incurred by DCC, either to date or in the future, in connection with the BREAST IMPLANT CLAIMS.” (Motion, Ex. E)

In response to Request No. 1, Dow Corning initially objected to the definition of “Ground Up Loss” as that term does not appear in the Settlement Agreement. (Motion, Ex. F) Dow Corning prepared summaries of its breast implant costs from the early 1990s to the present, in the form of over 1,000 pages of spreadsheets. Dow Corning claims the source of the summaries is an insurance billing system that Dow Corning used to collect cost information relating to its breast implant claims. The costs, according to Dow Corning, were consistent with the Final Judgment of June 1996 in the coverage litigation in Wayne County Circuit Court where the court found that the \$350 million of costs presented at trial were for breast implant claims, were reasonable and necessary, qualified as generic defense, case specific defense or liability costs and were covered under the policies issued by the LMI Claimants. Dow Corning claims these costs fall under the

definitions of “Generic Expenses,” “Allocated Expenses,” and “Liability Payments” set forth in the Settlement Agreement. What Dow Corning contends are the Total Ultimate Costs are organized as follows: 1) Pre-filing Defense Expenses and Indemnity Costs of \$462,783,695; 2) Post-filing, Pre-Emergence Defense Expenses of \$139,561,795; 3) Post-Emergence Defense Expenses of \$7,972,528; 4) Interest Paid to Trust of \$92,908,572; and, 5) Interest on Trapped Indemnity Costs and Defense Expenses of \$40,902,325. Including the funding payment obligations, Dow Corning claims its Total Ultimate Costs are \$3.172 billion.

At the LMI Claimants' request, Dow Corning prepared another summary that provided details about the vendors in the post-filing, pre-emergence category that billed at \$1 million or higher. Dow Corning also provided a spreadsheet regarding the epidemiology studies requested or commissioned by Dow Corning that are included in its Total Ultimate Costs. Dow Corning has expressly stated to the LMI Claimants that although most costs in its totals are for breast implant claims, a minor portion are for other silicone product claims. Dow Corning included the totals because such costs are covered under its insurance policies and other insurers are paying them. Dow Corning claims the billing system does not segregate the minor amount of other silicone products claim costs.

*14 Dow Corning claims that the LMI Claimants deposed Maureen Craig, its Rule 30(b)(6) witness on these issues. At all times, including during Ms. Craig's deposition, Dow Corning offered underlying documentation for the LMI Claimants' review. The LMI Claimants now seek to have Dow Corning supplement its response. The LMI Claimants complain that Dow Corning should not have included the costs for non-breast implant claims. The LMI Claimants argue that the costs of “bankruptcy” should not be included. They also seek to exclude any costs for cases that name Dow Chemical, in addition to Dow Corning. Dow Corning responds that the LMI Claimants do not object

Slip Copy, 2010 WL 3927728 (E.D.Mich.)
 (Cite as: 2010 WL 3927728 (E.D.Mich.))

to the use of the 1,000 pages of spreadsheets. In its reply, the LMI Claimants argue that Dow Corning has not undertaken the analysis required to answer Document Request No. 1 and has used an expense billing system which was not the criteria set forth in the Settlement Agreement.

There is no requirement in the LMI Claimants' Document Request No. 1 that Dow Corning undertake an analysis of the documents requested by the LMI Claimants. Rule 34 does not require a party to perform such an analysis. Rule 34 allows a party to request a party "*produce and permit the requesting party or its representative to inspect, copy, test, or sample ... items in the responding party's possession, custody, or control.*" Fed.R.Civ.P. 34(a)(1) (italics added). Dow Corning has made available to the LMI Claimants the opportunity to inspect its records which support Dow Corning's spreadsheets submitted to the LMI Claimants. The LMI Claimants have not sought to copy or inspect the records Dow Corning identified were the basis of its 1000 pages of spreadsheets. If the LMI Claimants seek to review the underlying records, they must so request within 14 days of the entry of this Order.

It appears that the LMI Claimants, in their motion, object to Dow Corning's interpretation of the phrase at issue in the reimbursement provision, "the total of the Allocated Expenses, Generic Expenses and Liability Payments attributable to Dow Corning Breast Implant Claims." (Reimbursement Provision, § VI.D.) If there is a dispute as to the meaning of the phrase and what costs are attributable to the "total," that issue is a question of fact for the trier of fact. Each party may argue what the phrase means and how the particular costs each party claims apply to the phrase. Dow Corning has appropriately responded to the LMI Claimants' Document Request No. 1.

3. Interrogatories Nos. 8 and 9

After receipt of Dow Corning's spreadsheets and summaries in response to Document Request No. 1, the LMI Claimants followed up with Interrogatory Nos. 8 and 9 asking:

8(a) for all entries regarding scientific studies, please state who requested or commissioned each study (e.g. what corporate entity, consultant or expert, or law firm), when the study was commissioned, and for what purpose the study was commissioned;

*15 8(b) for all entries regarding legal services, please state the nature of the work performed by each firm, the matter(s) for which each was retained, and the person(s) and/or entity(ies) each firm was retained to represent; ...

9. [P]lease provide the information for "trapped costs that were incurred pre-filing and paid post-emergence" that YOU provided for "Post-Filing, Pre-Emergence" expenses in DCC-04367-04372 (and that YOU have been requested to provide pursuant to Interrogatory No. 8 above).

(Motion, Ex. K) The LMI Claimants state that Dow Corning served its responses to these Interrogatories and supplemented these responses with revised spreadsheets. The LMI Claimants argue that the revised spreadsheets provided only cursory descriptions of the nature of each expense.

With regard to the scientific studies, the LMI Claimants claim that the information is necessary to determine whether the studies were commissioned in the ordinary course of Dow Corning's research and development initiatives, which the LMI Claimants argue do not meet the definition of either an allocated or generic expense. The LMI Claimants seek further information as to "who commissioned each study" to determine whether the costs associated with the studies fall under an allocated or generic expense.

As to the law firm information, the LMI Claimants require the information as to the "nature of the work performed by each firm, the matter(s) for which each was retained and the person(s) and/or entity(ies) each firm was retained to represent," to determine whether the claimed legal fees fall within the definitions of allocated and generic ex-

Slip Copy, 2010 WL 3927728 (E.D.Mich.)
 (Cite as: 2010 WL 3927728 (E.D.Mich.))

penses “directly attributable” to the defense of [breast implant](#) claims. The LMI Claimants assert that Dow Corning does not identify the specific matters-apart from the bankruptcy-for which the firms were retained and does not specify whether the firms were retained to represent any persons or entities other than Dow Corning.

Dow Corning responds that with regards to the scientific studies, Dow Corning produced a spreadsheet showing epidemiology studies included in Dow Corning's costs and indicating that each study was requested or commissioned by Dow Corning. Dow Corning states that the vendor, the “subject” of the study and the year the study was commissioned were listed. The second spreadsheet includes descriptions of services provided by each vendor that conducted the studies. (Resp., Ex. 14) Ms. Craig's deposition testimony provided details and reasons why the studies were conducted in connection with Dow Corning's defense of [breast implants](#). (Resp., Ex. 2, 74-75, 263) Dow Corning claims that as to the law firm information, Dow Corning produced a spreadsheet that states the name of the law firm, a description of services provided regarding [breast implant](#) claims, the amount paid to the firm from 1995 to 2004. (Resp., Ex. 12) Dow Corning maintains that it has offered the LMI Claimants the opportunity to review the underlying documentation to support their entries.

***16** The LMI Claimants reply that the supplements to the interrogatories are insufficient and seek an explanation, on an entry-by-entry basis, of why each expense meets the criteria of the Settlement Agreement.

The Court finds that Dow Corning's responses and supplements to Interrogatories Nos. 8 and 9 are sufficient. It is Dow Corning's position that the items they submitted in their spreadsheets meet the criteria of the Settlement Agreement. The LMI Claimants may dispute Dow Corning's position but they may delve into the documents further if they do not agree with Dow Corning's position.

[Rule 33\(d\)](#) provides:

If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

- (1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and
- (2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

[Fed.R.Civ.P. 33\(d\)](#). Merely relying on the option to produce business records without specifying the records that must be reviewed with sufficient detail is insufficient. *See Sungjin Fo-Ma, Inc. v. Chainworks, Inc.*, 2009 WL 2022308 * 4 (E.D.Mich. Jul.8, 2009) (unpublished). “[D]irecting the opposing party to an undifferentiated mass of records is not a suitable response to a legitimate request for discovery.” *Id.*; quoting *T.N. Taube Corp. v. Marine Midland Mortgage Corp.*, 136 F.R.D. 449, 455 (W.D.N.C.1991).

Dow Corning has sufficiently detailed and identified the underlying records in their summaries. The LMI Claimants do not dispute the lack of entries but merely object to Dow Corning listing the specific entries. The LMI Claimants may (or may not) be able to glean any other information they seek by examining the underlying documents. The burden of further examining the underlying documents, which Dow Corning has already done, is equal to both parties. The LMI Claimants may review the underlying records to test Dow Corning's position that the entries in their spreadsheets meet the criteria under the Settlement Agreement. Should the LMI Claimants seek such review, they must so

Slip Copy, 2010 WL 3927728 (E.D.Mich.)

(Cite as: 2010 WL 3927728 (E.D.Mich.))

request within 14 days from the entry of this Order. It is noted that ultimately, the issue of whether the entries meet the criteria of the Settlement Agreement is for the trier of fact.

4. Interrogatory No. 11

The LMI Claimants posed Interrogatory No. 11 to seeking further information related to the one-page summary of spreadsheets Dow Corning produced of its insurance reimbursable costs and expenses:

11. Directing YOUR attention to DCC-03310, please state whether YOU contend that the items in the following categories of costs and expenses constitute “Allocated Expenses, Generic Expenses, [or] Liability Payments attributable to Dow Corning Breast Implant Claims” under Section VI.D of the SETTLEMENT:

*17 (a) “Pre-Filing Defense Expenses and Indemnity Payments”;

(b) “Post-Filing Pre-Emergence Defense Expenses”;

(c) “Interest Paid to Trust” “ and,

(d) “Interest on Trapped Indemnity and Defense Expenses While in Bankruptcy.”

If YOU contend that the items in these categories constitute “Allocated Expenses, Generic Expenses, and Liability Payments attributable to Dow Corning Breast Implant Claims” under Section VI .D. of the SETTLEMENT, please explain whether they constitute “Allocated Expenses,” “GENERIC Expenses” or “Liability Payments” and why.

(Motion, Ex. K) Dow Corning specifically responded to Interrogatory No. 11 by addressing the subparts:

a. Dow Corning contends that most of the costs and expenses included in the category of “Pre-Filing Defense Expenses and Indemnity Costs” are “Allocated Expenses,” “Generic Ex-

penses,” or “Liability Payments” that are “attributable to Dow Corning Breast Implant Claims.” A minor portion of the costs was incurred in connection with other silicone product claims. Dow Corning refers the LMI Claimants to the spreadsheets produced by Dow Corning that provide information concerning these costs and expenses. *See* DCC-04375 to DCC-05060. Dow Corning also refers the LMI Claimants to the relevant definitions and provisions in the Settlement Agreement.

b. Dow Corning contends that most of the expenses included in the category of “Post-Filing, Pre-Emergence Defense Expenses” are “GENERIC Expenses” or “Allocated Expenses” that are “attributable to Dow Corning Breast Implant Claims.” A minor portion of the costs was incurred in connection with other silicone product claims. A total of \$9,079,130.05 of the costs was credited against the payment obligations due to the Settlement Facility pursuant to the Stipulation and Order dated May 10, 2004. Dow Corning refers the LMI Claimants to the spreadsheets produced by Dow Corning that provide information concerning these costs and expenses. *See* DCC-05061 to DCC-05078. Dow Corning also refers the LMI Claimants to the relevant definitions and provisions in the Settlement Agreement.

c. Dow Corning contends that the interest payments included in the category of “Interest Paid to Trust” are “Liability Payments” that are “attributable to Dow Corning Breast Implant Claims.” Dow Corning refers the LMI Claimants to the document produced by Dow Corning that provides information concerning these payments. *See* Bates No. DCC-04373. Dow Corning also refers the LMI Claimants to the relevant definitions and provisions in the Settlement Agreement.

d. Dow Corning contends that most of the costs and expenses included in the category of “Interest on Trapped Indemnity and Defense Expenses

Slip Copy, 2010 WL 3927728 (E.D.Mich.)

(Cite as: 2010 WL 3927728 (E.D.Mich.))

While IN Bankruptcy” are “Allocated Expenses,” “Generic Expenses,” or “Liability Payments” that are “attributable to Dow Corning Breast Implant Claims.” A minor portion of the costs was incurred in connection with other silicone product claims. Dow Corning refers the LMI Claimants to the spreadsheets produced by Dow Corning that provide information concerning these payments. See Bates Nos. DCC-4019 to DCC-4341. Dow Corning also refers the LMI Claimants to the relevant definitions and provisions in the Settlement Agreement.

*18 (Motion, Ex. M) Dow Corning claims that the LMI Claimants' request for an item-by-item basis for every cost included in the four cost categories in subparts (a) through (d) is not required by Interrogatory No. 11. This interrogatory merely asks Dow Corning's contentions about whether the items in each category are Allocated Expenses, Generic Expenses, or Liability Payments and why. Dow Corning argues that its answers are responsive to the interrogatories.

In reply, the LMI Claimants argue that the costs and expenses listed by Dow Corning, although related to the bankruptcy costs or the defense of the breast implant claims, are not “directly attributable” to such, as the Settlement Agreement requires and should not be included. The LMI Claimants further argue that Dow Corning has not performed the analysis required by the Settlement Agreement and requested as discovery.

Again, the LMI Claimants object to Dow Corning's responses because they dispute the costs listed by Dow Corning as “directly attributable” to the bankruptcy costs or defense of breast implant claims required by the Settlement Agreement. The LMI Claimants' argument goes to the merits of the dispute. As to the analysis the LMI Claimants seek, Interrogatory No. 11 does not request an analysis but merely asks for Dow Corning's contention as to the categories of costs listed by Dow Corning. Dow Corning has answered Interrogatory No. 11.

5. Interrogatory No. 12

The LMI Claimants assert that Dow Corning must state whether each item listed on its chart constitutes either an “allocated” or “generic” expense attributable to Dow Corning breast implant claims, as required by the Settlement Agreement, and why. The LMI Claimants claim Dow Corning has completely failed to answer both aspects of this interrogatory. Interrogatory No. 12 states,

Directing YOUR attention to DCC-04369-04372, please state whether YOU contend that each item listed therein constitutes an “Allocated Expense[], Generic Expense[], [or] Liability Payment[] attributable to Dow Corning Breast Implant Claims” under Section VI.D of the SETTLEMENT. If YOU contend that an item is listed in DCC-04369-04372 constitutes an “Allocated Expense[], Generic Expense[], [or] Liability Payment[] attributable to Dow Corning Breast Implant Claims,” please explain whether it is an “Allocated Expense [],” “Generic Expense[]” or “Liability Payment[]” and why.

(Motion, Ex. K)

Dow Corning responds that the LMI Claimants waited over six months to raise this issue. However, at the LMI Claimants' request, Dow Corning informed the LMI Claimants in an April 6, 2009 letter that it hoped “to get this supplemental response to you before the end of the month.” (Resp., Ex. 25) On April 30, 2009, Dow Corning claims the LMI Claimants filed the instant motion instead of waiting until they received Dow Corning's supplemental response. Dow Corning claims that it provided the supplement to Interrogatory No. 12 on May 12, 2009. (Resp., Ex. 26) The response indicated Dow Corning submitted revised spreadsheets:

*19 The spreadsheet that is Bates numbered DCC-05233 to DCC-05243 provides descriptions of services rendered by vendors with billings over \$1 million as listed on the chart “Dow Corning-Post-Filing, Pre-Emergence Non Case Specific-Defense Expenses and Indemnity Payment Re-

Slip Copy, 2010 WL 3927728 (E.D.Mich.)
 (Cite as: 2010 WL 3927728 (E.D.Mich.))

port (Revised).” That spreadsheet also states Dow Corning's contention with regard to whether and why the services rendered by each vendor listed thereon constitute “Allocated Expenses,” “Generic Expenses,” and/or “Liability Payments” that are attributable to Dow Corning Breast Implant Claims. All of the costs and expenses included on the spreadsheet are “Generic Expenses” or “Allocated Expenses” that are “attributable to Dow Corning Breast Implant Claims.” ...

(Resp., Exs. 26 and 12 (spreadsheet)).

The LMI Claimants reply that the May 12, 2009 response merely repeats the bald conclusion that the costs are Generic Expenses under the Settlement Agreement's definition. The LMI Claimants argue that many of the expenses noted by Dow Corning should not be included and that Dow Corning has not performed the analysis required by the Settlement Agreement and requested in discovery.

The revised spreadsheets submitted by Dow Corning responds to the LMI Claimants' Interrogatory No. 12 request to state whether or not the noted expenses constitute “Allocated Expenses,” “Generic Expenses,” and/or “Liability Payments.” The LMI Claimants do not believe these expenses fall under the terms of the Settlement Agreement. Again, the LMI Claimants argue the merits whether the costs are within the meaning of the terms of the Settlement Agreement. Interrogatory No. 12 does not ask Dow Corning to perform an analysis but merely requests that Dow Corning expressly note the category to which the costs should be attributed to. Dow Corning has done so in its revised spreadsheets.

For the reasons set forth above, the Court denies the LMI Claimants' Motion to Compel Dow Corning Corporation to Provide Discovery on Expenses that it Seeks to Include in its Total Loss.

H. The LMI Claimants' Motion for Leave to File *Instante*r Motion Regarding Common Interest

Privilege and for Reconsideration and Clarification of January 30, 2009 Order

The LMI Claimants seek reconsideration and clarification of the Court's January 30, 2009 Order regarding the common interest privilege the Court rejected. This motion was filed on March 26, 2009, outside the ten-day period provided in Local Rule 7.1(g).^{FN1} The LMI Claimants argue that since the Court's order was issued circumstances have changed because Dow Corning is using the Court's Order to try to obtain further discovery, but has also indicated it may be withholding documents on the basis of the very common interest privilege the Court rejected as to the LMI Claimants' documents.

FN1. Effective March 1, 2010, a motion for rehearing or reconsideration must be filed within 14 days after entry of the judgment or order. E.D. Mich. LR 7.1(h)(1).

The Local Rules of the Eastern District of Michigan provide that any motion for reconsideration shall be served not later than ten (10) days after entry of such order. E.D. Mich. LR 7.1(g)(1). No response to the motion and no oral argument thereon shall be allowed unless the Court, after filing of the motion, otherwise directs. E.D. Mich. LR 7.1(g)(2). The Local Rule further states:

***20 (3) Grounds.** Generally, and without restricting the discretion of the Court, motions for rehearing or reconsideration which merely present the same issues ruled upon by the Court, either expressly or by reasonable implication, shall not be granted. The movant shall not only demonstrate a palpable defect by which the Court and the parties have been misled but also show that a different disposition of the case must result from a correction thereof.

E.D. Mich. LR 7.1(g)(3).

The LMI Claimants' motion is untimely. Even if the Court were to consider the motion, the Court finds that the LMI Claimants merely present the same issues, ruled upon by the Court in its January

Slip Copy, 2010 WL 3927728 (E.D.Mich.)

(Cite as: 2010 WL 3927728 (E.D.Mich.))

30, 2009 Order, either expressly or by reasonable implication. The LMI Claimants have not demonstrated a palpable defect by which the Court and the parties were misled. The LMI Claimants also have not shown that a different disposition of the case would result from a correction of the Order. The LMI Claimants' arguments in this motion are also raised in the motions addressed in this Order. The Court's rulings on those issues are set forth above. As noted by the Court, the common interest privilege raised by Dow Corning as it relates to its shareholders, Dow Chemical and Corning, is in a different posture raised by the LMI Claimants as to their reinsurers. The LMI Claimants' Motion for Leave to File *Instante*r Motion Regarding Common Interest Privilege and for Reconsideration and Clarification of January 30, 2009 Order is denied.

I. Dow Corning Revised Motion to Compel Documents regarding Settlement Negotiations and Agreements.

The Court took this motion under advisement pending the *in camera* production of the unredacted documents to the Court. The Court has reviewed the documents.

The LMI Claimants sought protection of certain documents based on the work-product doctrine. As noted above, [Rule 26\(b\)\(3\)](#) protects documents prepared in anticipation of litigation or for trial. [Fed.R.Civ.P. 26\(b\)\(3\)](#). The two questions asked to determine whether a document has been prepared in anticipation of litigation are: 1) whether the document was prepared "because of" a party's subjective anticipation of litigation, as contrasted with ordinary business purpose; and 2) whether that subjective anticipation was objectively reasonable. *Roxworthy*, 475 F.3d at 594. The burden is on the party claiming protection to show that anticipated litigation was the "driving force behind the preparation of each requested document." *Id.* at 595.

The documents submitted by the LMI Claimants to the Court were documents from third-party Peterson Consulting created in 1994-95. It is clear the documents were created during the litigation

before the Wayne County Circuit Court and in anticipation of the settlement between the parties in that case. The documents are relevant to the issue before the Court—the interpretation of the reimbursement provision under the Settlement Agreement. Although the documents were work product documents in anticipation of the litigation before the Wayne County Circuit Court, the documents were not prepared in anticipation of *this* litigation. The driving force behind the preparation of the documents in 1994-95 was not the anticipation of *this* litigation filed in 2004. The LMI Claimants must produce the documents from Peterson Consulting set forth in the privilege/work product log submitted to the Court since those documents were not prepared in anticipation of *this* litigation.

*21 The Court has reviewed the documents submitted by the LMI Claimants which they claim are subject to the attorney-client privilege. The correspondences from and to the LMI Claimants' counsel are clearly subject to the attorney-client privilege, even if these documents were exchanged or inadvertently produced to Dow Corning during the settlement negotiations in 1994-95 in the Wayne County Circuit Court litigation. Unless the LMI Claimants during the remaining discovery period allege that their interpretation of the reimbursement provision was based on then-counsel's interpretation of the provision, the Court will not order production of these documents. A claim or defense which places at issue the subject matter of a privileged communication in such a way that a party holding the privilege will be forced to draw upon the privileged material at trial in order to prevail. *In re Lott*, 424 F.3d at 453-54. The LMI Claimants cannot use "the content of the privileged communications that is used as a sword." *Ross*, 423 F.3d at 604-05.

Dow Corning's Revised Motion to Compel Production of All Documents Relating to the Settlement Negotiations and the Settlement Agreement at Issue is granted as to the documents designated as work product by the LMI Claimants and denied as

Slip Copy, 2010 WL 3927728 (E.D.Mich.)
(Cite as: 2010 WL 3927728 (E.D.Mich.))

to the documents on the LMI Claimants' attorney-client privilege log.

III. CONCLUSION

For the reasons set forth above,

IT IS ORDERED that Dow Corning's Motion to Compel Compliance with the Court's October 3, 2008 and January 30, 2009 Order by Requiring LMI Claimants to Produce Immediately Responsive 1999 Reinsurance Communications (# 29980) is GRANTED.

IT IS FURTHER ORDERED that Dow Corning's Motion to Compel Compliance with the Court's October 3, 2008 and January 30, 2009 Orders Regarding Reinsurance-Related Information (# 29984) is GRANTED.

IT IS FURTHER ORDERED that Dow Corning's Motion to Compel LMI Claimants to Provide Release-Adjustment Discovery (# 29985) is GRANTED.

IT IS FURTHER ORDERED that the LMI Claimant's Motion to Compel Production of Documents Over Which Dow Corning has Waived Attorney-Client Privilege an/or Work Product Protection (# 29986) is DENIED.

IT IS FURTHER ORDERED that LMI Claimant's Motion to Compel Production of Communications and Documents Shared with Third Parties (# 30004) is DENIED.

IT IS FURTHER ORDERED that LMI Claimant's Motion to Compel Response to Interrogatory No. 15 Regarding Reimbursement Methodology (# 30013) is GRANTED but Dow Corning need not supplement its answer until after discovery is complete regarding the LMI Claimants' reimbursement methodology or during the expert discovery stage.

IT IS FURTHER ORDERED that LMI Claimant's Motion to Compel Dow Corning to Provide Discovery on Expenses that it Seeks to In-

clude in its Total Loss (# 30016) is DENIED. If the LMI Claimants seek to review the underlying documents as offered by Dow Corning, the LMI Claimants must so inform Dow Corning within 14 days from the entry of this Order.

*22 IT IS FURTHER ORDERED that the LMI Claimant's Motion for Leave to File Instanter Motion Regarding Common Interest Privilege and for Reconsideration and Clarification of January 30, 2009 Order (# 29995) is DENIED.

IT IS FURTHER ORDERED that Dow Corning's Revised Motion to Compel Documents regarding Settlement Negotiations (# 29938) is GRANTED IN PART and DENIED IN PART.

E.D.Mich.,2010.
In re Dow Corning Corp.
Slip Copy, 2010 WL 3927728 (E.D.Mich.)

END OF DOCUMENT

Not Reported in F.Supp.2d, 2007 WL 2571969 (E.D.Mich.)
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Only the Westlaw citation is currently available.

United States District Court,
E.D. Michigan,
Southern Division.
Henry KORMOS, Plaintiff,
v.
SPORTSSTUFF, INC., et al., Defendants.

Civil Action No. 06-CV-15391.
Sept. 4, 2007.

Bret A. Schnitzer, Lincoln Park, MI, Fred A. Custer
, Materna, Custer, Madison Heights, MI, for
Plaintiff.

David J. Yates, Eric P. Conn, Kopka, Pinkus, Farm-
ington Hills, MI, Thomas M. Peters, Vandever
Garzia, Troy, MI, for Defendants.

***OPINION AND ORDER GRANTING IN PART
AND DENYING IN PART PLAINTIFF'S MO-
TION TO DEFAULT DEFENDANT
SPORTSSTUFF FOR DISCOVERY ABUSES
OR, IN THE ALTERNATIVE, TO COMPEL
PRODUCTION OF DOCUMENTS IN
PLAINTIFF'S SECOND REQUEST FOR PRO-
DUCTION OF DOCUMENTS AND THINGS***
MONA K. MAJZOUB, United States Magistrate
Judge.

*1 Before the Court is Plaintiff's Motion to De-
fault Defendant Sportsstuff for Discovery Abuses
or, in the Alternative, to Compel Production of
Documents in Plaintiff's Second Request for Pro-
duction of Documents and Things filed on July 24,
2007. (Docket no. 25). Defendants filed a Response
on August 15, 2007. (Docket no. 34). The parties
filed a Joint Statement of Contested and Uncon-
tested Issues on August 17, 2007. (Docket no. 37).
The motion was referred to the undersigned for
hearing and determination pursuant to 28 U.S.C. §
636(b)(1)(A). (Docket no. 30). The Court conduc-
ted a hearing on the motion on August 28, 2007.

The matter is now ready for ruling.

This is a products liability action. Plaintiff al-
leges that he suffered injuries including a **fractured
spine** on June 24, 2006 as a result of using the
Wego Kite Tube (Kite Tube) water sport product.
Plaintiff further alleges that Sportsstuff, Inc.
(Sportsstuff or Defendant) designed, manufactured,
tested and marketed the Kite Tube. Plaintiff alleges
that Defendant World Publications, LLC, advert-
ised and promoted the Kite Tube. Plaintiff brings
claims against Sportsstuff for statutory or common
law product liability, breach of warranty, violation
of the Michigan Consumer Protection Act and in-
herently dangerous product. Plaintiff brings claims
against World Publications, LLC, for statutory or
common law publication liability, breach of war-
ranty, violation of the Michigan Consumer Protec-
tion Act and inherently dangerous product.

Plaintiff brings this Motion to default Defend-
ant Sportsstuff for discovery abuses or, in the al-
ternative, to compel production of documents re-
quested pursuant to Plaintiff's Second Request for
Production of Documents and Things to Defendant
Sportsstuff. Plaintiff also seeks court costs, includ-
ing attorney fees and costs. The Requests for Pro-
duction at issue in this Motion involve requests for
documents relating to other lawsuits against De-
fendant and lawsuits relating to the Kite Tube.

As an initial matter, neither party did its job in
briefing these issues for the Court. First, Plaintiff/
movant did not include a "verbatim recitation of
each interrogatory, request, answer, response, and
objection which is the subject of the motion or a
copy of the actual discovery document which is the
subject of the motion" as required by Local Rule
37.2. Defendant in its Response included a copy of
the requests and responses at Exhibit A. Second,
neither party provided any legal authority for its ar-
guments for or against production of the requested
documents related to other lawsuits other than
simply referencing the Federal Rules of Civil Pro-

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(Cite as: 2007 WL 2571969 (E.D.Mich.))

cedure, despite existing caselaw regarding the discovery of other lawsuits and public records.

Fed.R.Civ.P. 26(b) allows “discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” The question of whether the requested discovery is reasonably calculated to lead to the discovery of admissible evidence is a close question. Broad discretion is afforded to the Court in regulating discovery. *Rhodes v. McDannel*, 945 F.2d 117, 119 (6th Cir.1991). The Court is guided by the strong, overarching policy of allowing liberal discovery. See *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512-13, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002).

*2 Under Fed.R.Civ.P. 34, any party may serve on any other party a request to produce documents which “are in the possession, custody or control of the party upon whom the request is served.” “The word “control” is to be broadly construed. A party controls documents that it has the right, authority, or ability to obtain upon demand.” *Scott v. AREX, Inc.*, 124 F.R.D. 39, 41 (D.Conn.1989) ^{FN1}.

FN1. Defendant's argument that if documents are not in the control of local counsel in these actions then they are not available for production is not persuasive. The Defendant is Sportsstuff. To the extent that Sportsstuff may obtain documents from any of its local counsel upon demand, the documents are within its control.

“Discovery of other lawsuits is not a subject that is amenable to a *per se* rule. The Court must look to the relevance of the other suits to the particular claims at issue.” *Thornton v. State Farm Mutual Auto Ins. Co.*, 2006 U.S. Dist. LEXIS 87845 *5 (N.D. Ohio 2006). “[W]hether pleadings in one suit are “reasonably calculated” to lead to admissible evidence in another suit ... depends on the nature of the claims, the time when the critical

events in each case took place, and the precise involvement of the parties, among other considerations.” *Payne v. Howard*, 75 F.R.D. 465, 469 (D.D.C.1977); *Thornton*, 2006 U.S. Dist. LEXIS 87845 *5. Other lawsuits could lead to evidence of knowledge. *Thornton*, 2006 U.S. Dist. LEXIS 87845 *7; see also *Lohr v. Stanley-Bostitch, Inc.*, 135 F.R.D. 162, 164 (W.D.Mich.1991) (“For discovery purposes, the court need only find that the circumstances surrounding the other accidents are similar enough that discovery concerning those incidents is reasonably calculated to lead to the uncovering of substantially similar occurrences.” *Id.* at 164.). There is caselaw that supports the limited production of pleadings from other lawsuits, but “[i]t is well established that discovery need not be required of documents of public record which are equally accessible to all parties.” *Securities and Exchange Comm'n v. Sloan & Co.*, 369 F.Supp. 994, 995 (S.D.N.Y.1973).

Plaintiff in his motion and brief makes only general assertions that his discovery requests are “directed at relevant and substantive information pertaining to this matter.” See Motion ¶ 4. While it is not clear from Plaintiff's Motion to Compel and Brief how some of Plaintiff's Requests are relevant, Plaintiff's Complaint contains numerous allegations that Defendant Sportsstuff had knowledge that its product was defective and unreasonably dangerous and that Defendant knew or should have known about the various propensities of the Kite Tube to behave unpredictably and dangerously. First Amended Complaint ¶¶ 3, 30, 31, 32, 33, 34, 35-38.

As shown above, discovery of other lawsuits may lead to the discovery of admissible evidence of prior knowledge and notice. However, Plaintiff seeks a variety of documents related to other lawsuits that may or may not have similar circumstances to Plaintiff's lawsuit. Plaintiff also seeks documents that are a matter of public record. There is a very real danger that the burden of producing these documents will far outweigh the probative value of the documents on these issues. Although

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(Cite as: 2007 WL 2571969 (E.D.Mich.))

Plaintiff's written requests were broad and in many instances not limited to similar incidents involving the Kite Tube, at the hearing Plaintiff's counsel orally amended the pleadings to limit his requests to information relating to lawsuits filed against Defendant from 2005 to present which involve the Kite Tube and assert injury, death and/or product liability or product liability-related claims.

*3 Request for Production No. 7 requests copies of any and all other legal complaints filed by other plaintiffs against Defendant. Defendant objected to this Request as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objected that the information requested is equally available to Plaintiff as to Defendant.

The identifying information related to any lawsuits filed and served on Defendant is readily available to Defendant. It would be burdensome, if even possible, for Plaintiff to contact and search the docket of every court in the country seeking this information, some of which is not available online. With the identifying information for each action, Plaintiff can pursue the publicly filed documents himself. Therefore, Defendant will be ordered to produce identifying information for any lawsuit filed against Defendant from 2005 to December 5, 2006, the date of filing Plaintiff's Complaint, which involves the Kite Tube and asserts injury, death and/or product liability or product liability-related claims. Identifying information should include the names of the parties, the court and jurisdiction in which the lawsuit was filed, the date of filing and the docket number for the lawsuit. The production is further limited to information from documents within the possession, custody or control of Defendant. The Court will deny Plaintiff's request for copies of legal complaints because they are a matter of public record.

Request for Production No. 12 requests copies of any and all deposition transcripts, and exhibits attached thereto of depositions of any employee, agent or representative of Sportsstuff taken in any

Wego kite tube case. Defendant objected that the request is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objected that it is bound by a protective order covering a portion of the information requested.

Plaintiff argued that under [Fed.R.Civ.P. 26\(b\)\(3\)](#), he is entitled to statements made by a party concerning the subject matter of this action without showing necessity. However, [Fed.R.Civ.P. 26\(b\)\(3\)](#) states that "[a] party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party." The purpose of this portion of [Rule 26\(b\)\(3\)](#) is to enable "a party to secure production of *his own* statements without any special showing." [Fed.R.Civ.P. 26\(b\)\(3\)](#) Advisory Committee's Note, 1970 Amendment (emphasis added). The exception does not apply in this case. Plaintiff is not seeking his own statement, he seeks statements by Sportsstuff. Plaintiff has not otherwise made a showing of the relevance and necessity of producing the depositions requested by Request No. 12. The Court will deny Plaintiff's Motion to Compel as to Request No. 12.

Request for Production No. 13 requests copies of any and all deposition transcripts and exhibits of depositions of all expert witnesses, excluding medical experts, taken in any Wego kite tube case. Defendant objected that this request was overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant also responded that its own experts in other cases have not, to date, testified in this matter and therefore there are no deposition transcripts to provide. Plaintiff did not show how the requested documents are relevant to his lawsuit and provided no legal authority for his premise that Defendant must bear the burden of supplying him with deposition transcripts for expert witnesses in a multitude of other lawsuits. With the information Defendant will supply in response to Request No. 7, Plaintiff may pursue this information on his own. The Court

Not Reported in F.Supp.2d, 2007 WL 2571969 (E.D.Mich.)
(Cite as: 2007 WL 2571969 (E.D.Mich.))

will deny Plaintiff's Motion to Compel as to Request No. 13.

*4 Request for Production No. 14 requests copies of witness lists and/or expert disclosures filed by any other plaintiffs in a Wego Kite Tube case against Defendant Sportsstuff. Defendant objected to this request as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objected that the information requested is equally available to the Plaintiff as it is the Defendant.

Plaintiff requests Documents that have been "filed" and are a matter of public record. Again, with the information Defendant will provide in response to Request No. 7, Plaintiff may discern whether these lists are relevant to his case and may obtain them on his own. The Court will deny Plaintiff's Motion to Compel as to Request No. 14.

Request for Production No. 15 requests copies of any documents produced in any litigation in any Wego kite tube case by Sportsstuff. Defendant objected to this request as overly broad and unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further responded that Plaintiff already has all documents produced in all of the Kite Tube cases.

The Court will deny Plaintiff's Motion to Compel as to Request No. 15 because Defendant stated in its response and at the hearing that it has already provided these documents to Plaintiff. However, Defendant is reminded that it has a continuing obligation under the Federal Rules of Civil Procedure to supplement its responses including the production of additional documents if it learns that this production and/or response was incomplete.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Compel Production of Documents (docket no. 25) is **GRANTED IN PART AND DENIED IN PART** as set out below.

IT IS ORDERED that within seven days of

the entry of this Order, Defendant will produce in response to Request No. 7 the identifying information for any lawsuit filed against Defendant from 2005 to December 5, 2006, the date of filing Plaintiff's Complaint, which involves the Kite Tube and asserts injury, death and/or product liability or product liability-related claims. Identifying information includes the names of the parties, the court and jurisdiction in which the lawsuit was filed, the date of filing and the docket number for the lawsuit. The Order to Produce is limited to information from documents within the possession, custody or control of Defendant. Plaintiff's request for copies of the Complaints is DENIED pursuant to Request No. 7.

IT IS FURTHER ORDERED that Plaintiff's Motion to Compel as to Request Nos. 12, 13, 14 and 15 and for attorneys fees and costs and Plaintiff's Motion to Default Defendant are DENIED.

NOTICE TO THE PARTIES

Pursuant to [Fed.R.Civ.P. 72\(a\)](#), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under [28 U.S.C. 636\(b\)\(1\)](#).

E.D.Mich.,2007.

Kormos v. Sportsstuff, Inc.

Not Reported in F.Supp.2d, 2007 WL 2571969
(E.D.Mich.)

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(Cite as: 2011 WL 1002835 (E.D.Mich.))

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Only the Westlaw citation is currently available.

United States District Court,
E.D. Michigan,
Southern Division.
NISSAN NORTH AMERICA, INC., Plaintiff,
v.
JOHNSON ELECTRIC NORTH AMERICA, INC.,
Defendant.

Civil Action No. 09-CV-11783.
Feb. 17, 2011.

Thomas S. Bishoff, Dante A. Stella, Lisa A. Brown,
Dykema Gossett, Detroit, MI, Brittany M. Schultz,
Dykema Gossett, Bloomfield Hills, MI, Dawn N.
Williams, Dykema Gossett, Los Angeles, CA, for
Plaintiff.

Adam A. Wolfe, Matthew J. Lund, Pepper
Hamilton, Detroit, MI, Gregory J. Fleesler, Stephen
N. Weiss, Moses And Singer, New York, NY, Ho-
mayune A. Ghaussi, Thomas J. Manganello,
Warner, Norcross, Southfield, MI, for Defendant.

**ORDER DENYING PLAINTIFF'S MOTION
FOR PROTECTIVE ORDER (DOCKET NO. 79)**
MONA K. MAJZOUB, United States Magistrate
Judge.

*1 This matter comes before the Court on Plaintiff's Motion For Protective Order. (Docket no. 79). Defendant filed a combined brief in response and in support of a Cross-Motion To Compel Compliance With The Court's May 5, 2010 Order and For Sanctions. (Docket no. 92, 101). Plaintiff filed a reply brief. (Docket no. 108). The parties filed a Joint Statement of Resolved and Unresolved Issues. (Docket no. 120). On January 14, 2011 the Court struck Defendant's crossmotion. (Docket no. 104). The Motion For Protective Order has been referred to the undersigned for decision pursuant to 28 U.S.C. § 636(b)(1)(A). (Docket no. 89). The Court heard oral argument on the motion on February 7,

2011. This matter is now ready for ruling.

Plaintiff claims to have produced in excess of 1.79 million pages of documents during the course of discovery, along with 84,000 pages of documents from its non-party parent company in Japan. As Plaintiff points out in its motion, this Court entered an Order on May 5, 2010 which required Plaintiff to supplement its discovery responses to specifically identify sources of ESI it did not search because the sources are not reasonably accessible, the reasons for its contention that the ESI is not reasonably accessible without undue cost and effort, and the anticipated costs and effort involved in retrieving that ESI. (Docket no. 43). Defendant claims that Plaintiff's supplemental discovery responses contain misstatements and omissions and call into question Plaintiff's preservation and production of ESI. As a consequence, in order to verify that all of Plaintiff's reasonably accessible systems were searched for relevant ESI, Defendant claims that it informally asked Plaintiff to produce (a) a data map to show what data is stored on each of Plaintiff's systems, who uses the systems, the retention of the data stored and where and how the data is backed up or archived; (b) document retention policies; (c) tracking records and/or requests for restores; and (d) backup policies. According to Defendant, Plaintiff was required to provide responses to these four requests in order to comply with the May 5, 2010 Order.

Plaintiff filed the instant Motion for Protective Order in response to Defendant's informal discovery requests. In its motion Plaintiff argues that Defendant seeks discovery of its "not readily accessible" systems and has demanded that Plaintiff conduct broad and duplicative searches of witnesses whose documents have already been collected. Plaintiff now moves for a protective order denying Defendant discovery of (1) system-wide searches of Plaintiff's systems and custodians beyond what Plaintiff has already provided; (2) Plaintiff's "not readily accessible" sources identified by Plaintiff,

Slip Copy, 2011 WL 1002835 (E.D.Mich.)

(Cite as: 2011 WL 1002835 (E.D.Mich.))

including backups; (3) Plaintiff's record retention practices or disaster recovery backup policies; (4) Plaintiff's tracking records and requests for computer restores to IT and vendors; and (5) a "data map" to provide information on all of Plaintiff's systems. (Docket no. 79).

*2 Federal Rule of Civil Procedure 26(c) allows the Court to issue a protective order for good cause shown to protect a party from annoyance, embarrassment, oppression, or undue burden or expense. Plaintiff has the burden of showing good cause for a protective order. Plaintiff first asks for a protective order denying Defendant discovery of system-wide searches of Plaintiff's systems and custodians beyond what Plaintiff has already provided. Defendant argues in response that it has not asked Plaintiff to conduct additional searches. (Docket no. 79, Ex. C-7/28/10 letter). Rather, Defendant argues that it merely asked for confirmation that Plaintiff searched its systems for relevant ESI for forty-one employees who are either members of the Task Force assigned by Plaintiff to the recall issue, or who are listed in Plaintiff's Rule 26 disclosures.

Letter correspondence between the parties shows that Defendant did not ask that a search be made for ESI related to these forty-one individuals, only that Plaintiff confirm whether the computers, email accounts, network shares, and databases of these individuals were searched. (Docket no. 79, Ex. C-7/28/10 letter). Since Plaintiff claims to have searched the documents of its key custodians and states that it has already produced all relevant documents for all readily accessible sources, it should be able to provide this confirmation without significant effort. Presumably if Plaintiff did not search the computer systems of all or some of these forty-one individuals it can provide justification for its decision'. Since Defendant has not asked for additional searches, Plaintiff has failed to show good cause for issuing a protective order preventing Defendant from seeking system-wide searches of Plaintiff's systems and custodians beyond what Plaintiff has

already provided. Plaintiff's motion will be denied with regard to this request.

Next, Plaintiff moves for a protective order preventing Defendant from taking discovery of Plaintiff's "not readily accessible" sources identified by Plaintiff, including backups. Plaintiff contends that it has carefully searched for and produced relevant, non-privileged ESI from its readily accessible data systems, including email, group directories, user shares, personal computers and other systems. Specifically, Plaintiff claims to have searched Outlook email data and PST files; hard drives on individual computers, network shares mapped as various drive letters; and the ANEMS, IDOCS, IDEAS, GCARS, WRAPS, CPIA, VHF, CICS PO system, and Legacy business databases. (Docket no. 79). In addition, Plaintiff states that it identified key custodians who were likely to have responsive information relevant to this case and had their documents searched. Plaintiff also asserts that it requested documents and information from its non-party parent company, and that both it and its parent company searched hard copy files for paper documents, for documents stored on CD, DVD, or other external sources, and for physical parts.

*3 Plaintiff has identified in table format electronic data sources identified by key custodians as being potential sources of responsive information and claims that it identified, processed, and produced responsive information from these systems. (Docket no. 79 at 4-7). Plaintiff contends that the only systems it did not search are its disaster recovery or backup systems for email, network shares, and business databases because they are not readily accessible. Plaintiff argues that information on its backup systems is not reasonably accessible because of undue burden and cost. Plaintiff also asserts that a search of its backup or "not readily accessible" systems would fail to produce new data because the information on these systems is duplicative of information on Plaintiff's main systems which have already been searched. In support of its claims Plaintiff submitted under seal a declaration

Slip Copy, 2011 WL 1002835 (E.D.Mich.)
(Cite as: 2011 WL 1002835 (E.D.Mich.))

of Forrest Smith, Manager of Distributed Service Delivery Management for Plaintiff, which identifies the reasons Plaintiff did not restore its backups for the purpose of searching for relevant ESI, and the estimated cost and associated effort that would be required to search its backup systems. (Docket no. 81).

[Federal Rule of Civil Procedure 26\(b\)\(2\)\(B\)](#) provides:

A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of [Rule 26\(b\)\(2\)\(C\)](#). The court may specify conditions for the discovery.

[Fed.R.Civ.P. 26\(b\)\(2\)\(B\)](#)

The Court is satisfied after having read the Smith declaration along with the parties' briefs and attached exhibits, and after hearing the parties' oral arguments on the motion, that Plaintiff's backup systems are not reasonably accessible and that Defendant has not shown good cause to search these systems. However, Plaintiff has not shown that Defendant asked it to search its "not readily accessible" backup systems. Rather, Defendant asked for Plaintiff's backup policies, and its tracking records and requests for restores, claiming that data that has been restored is reasonably accessible. (Docket no. 79, Ex. C-7/28/10 letter). The Court finds that Plaintiff has not shown good cause for a protective order precluding Defendant from seeking discovery of Plaintiff's backup policies and tracking records or requests for restores. Furthermore, because Defendant has not asked Plaintiff to search its "not readily accessible" backup systems, there is no

basis for the Court to enter a protective order preventing discovery of these systems.

Plaintiff next moves for a protective order denying Defendant discovery of its record retention policies. Letter correspondence between the parties shows that Defendant asked Plaintiff for its document retention policy. (Docket no. 79, Ex C-7/28/10 letter). The Court finds that Plaintiff has failed to show good cause to preclude Defendant from seeking discovery of this policy.

*4 Plaintiff next asks for an order providing that Plaintiff is not required to generate a data map to show the age of data on all of Plaintiff's systems. Letter correspondence between the parties shows that Defendant asked Plaintiff for a data map to show what data is stored on each of Plaintiff's systems, who uses the systems, the retention of the data stored and where and how the data is backed up or archived. [Federal Rule of Civil Procedure 26](#) requires parties to make certain mandatory disclosures during the initial stages of discovery. Generally a party must, "without awaiting a discovery request," provide "a copy-or a description by category and location" of all electronically stored information that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses. [Fed.R.Civ.P. 26\(a\)\(1\)\(ii\)](#). In order to comply with this mandatory disclosure counsel must become knowledgeable about their client's computer systems and ESI at the onset of litigation. Hence, Plaintiff's counsel should have access to information from which it could readily discern what data is stored on each of Plaintiff's systems, who uses the systems, the retention of the data stored and where and how the data is backed up or archived. Plaintiff has not shown that it is in need of an order protecting it from annoyance, embarrassment, oppression, or undue burden or expense related to Defendant's request for this information. The Court will therefore deny Plaintiff's motion as to this request.

In Defendant's responsive brief and at the hearing on this motion Defendant made a number of

Slip Copy, 2011 WL 1002835 (E.D.Mich.)
(Cite as: 2011 WL 1002835 (E.D.Mich.))

broad accusations that Plaintiff has engaged in spoliation of evidence, has produced discovery with wide gaps of missing information and emails with missing metadata, has moved data to backup systems in order to avoid having to produce it, and has failed to produce information from its parent company. It is worth noting that while Plaintiff will not prevail on its Motion for Protective Order, the Court is presently satisfied that Plaintiff has diligently sought to meet its discovery obligations and has produced a substantial number of documents in response to Defendant's discovery requests. It is also worth noting that as of the date of the hearing on this motion not a single deposition had been taken in this case, despite the fact that discovery has been ongoing for well over one year and is scheduled to close in a matter of months. Defendant's baseless accusations of spoliation, missing metadata, and deceptive and unethical discovery practices are wholly unsubstantiated. Likewise, Defendant's unsupported allegation that Plaintiff has failed to produce information from its non-party parent company was put before the Court without any indication as to which documents Defendant seeks or any argument or proof to show that Plaintiff has sufficient control over the phantom documents to trigger its disclosure obligation.

Defendant also argues that Plaintiff has not identified its search criteria or explained what date ranges or keywords were used to collect responsive documents. "Electronic discovery requires cooperation between opposing counsel and transparency in all aspects of preservation and production of ESI." *William A. Gross Constr. Assoc., Inc. v. Am. Mfrs. Mut. Ins. Co.*, 256 F.R.D. 134, 136 (S.D.N.Y.2009). Defendant is of course entitled to know what search criteria was used in retrieving relevant ESI. However, Plaintiff contends that Defendant has not committed to or requested specific search terms or system limitations. (Docket no. 79 at 12 n .3). If this is so, it is patently unclear to the Court why Defendant would not propose its own search criteria or otherwise attempt to work cooperatively with the Plaintiff on this issue long before Plaintiff

searched its systems for ESI. Defendant makes every effort to tie its requests for a data map, document retention policies, tracking records and/or requests for restores, and backup policies to the Court's May 5, 2010 Order, going so far as to assert that Plaintiff has egregiously violated the Order by failing to provide it with this information. Indeed, Defendant asks the Court to compel production pursuant to that Order. The May 5, 2010 Order does not require Plaintiff to provide this information to the Defendant. Instead, with regard to ESI, the Order required Plaintiff to identify sources of ESI it did not search because they are not reasonably accessible, the reasons for its contention that the ESI is not reasonably accessible without undue cost and effort, and the anticipated cost and effort involved in retrieving that ESI. Plaintiff has complied with that provision of the Order.

*5 The Court construes Defendant's requests for a data map, document retention policies, tracking records and/or requests for restores, and backup policies as new, informal discovery requests that are separate and distinct from the May 5, 2010 Order. Therefore, Plaintiff does not need to provide this information in to be in compliance with that Order. Furthermore, the Court will not compel production based on informal letter requests, particularly where the matter is before the Court only on a Motion for Protective Order.

Plaintiff has not shown good cause for issuance of a protective order at this time. Accordingly, for the reasons stated herein Plaintiff's motion will be denied.

IT IS THEREFORE ORDERED that Plaintiff's Motion For Protective Order (docket no. 79) is **DENIED**.

NOTICE TO THE PARTIES

Pursuant to [Fed.R.Civ.P. 72\(a\)](#), the parties have a period of fourteen days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under [28 U.S.C. § 636\(b\)\(1\)](#).

Slip Copy, 2011 WL 1002835 (E.D.Mich.)
(Cite as: 2011 WL 1002835 (E.D.Mich.))

E.D.Mich.,2011.
Nissan North America, Inc. v. Johnson Elec. North
America, Inc.
Slip Copy, 2011 WL 1002835 (E.D.Mich.)

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(Cite as: 2008 WL 5263836 (E.D.Mich.))

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Only the Westlaw citation is currently available.

This decision was reviewed by West editorial staff and not assigned editorial enhancements.

United States District Court,
E.D. Michigan,
Southern Division.
TENNECO AUTOMOTIVE CO., INC., Plaintiff,
v.
KINGDOM AUTO PARTS, et al., Defendants.

Civil Action No. 08-CV-10467-DT.
Dec. 18, 2008.

Brent Seitz, Lisabeth H. Coakley, Robert J. Lenihan
, Harness, Dickey, Troy, MI, for Plaintiff.

John S. Leroy, Phyllis G. Morey, Robert C.J. Tuttle
, Brooks Kushman, Southfield, MI, for Defendants.

***OPINION AND ORDER GRANTING IN PART
DEFENDANTS' MOTION TO COMPEL***
MONA K. MAJZOUB, United States Magistrate
Judge.

*1 This matter comes before the Court on Defendants' Motion to Compel Discovery of Plaintiff on Defendants' First Set of Rule 34 Requests filed on October 3, 2008. (Docket no. 77). Plaintiff has responded. (Docket no. 89). Defendants have filed a Reply brief. (Docket no. 90). The parties also filed a Joint Statement of Unresolved Issues on October 31, 2008. (Docket no. 94). This motion has been referred to the undersigned for decision. (Docket no. 60). The Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(e). Defendants' motion is now ready for ruling.

Defendants seek an order compelling Plaintiff to permit them to inspect and designate for copying documents and electronically stored information responsive to Defendants' First Set of Rule 34 Requests. (Docket no. 94 at 4-5). Defendants also ask

for the Court to order Plaintiff to make a privilege log for any documents withheld on the basis of privilege. (*Id.*). Finally, Defendants seek an award of their reasonable expenses in making this motion. (*Id.*).

Plaintiff does not dispute Defendants' assertion that they served their First Set of Rule 34 Requests on July 28, 2008. (Docket no. 94 at 4). Plaintiff responded on September 2, 2008. In response, Plaintiff made general objections and, for most of the requests, stated that it would produce responsive documents at a future date. The parties disagree on whether responsive documents have been produced. Plaintiff contends that all responsive documents have been produced or are being compiled for production. (Docket no. 94 at 6). Plaintiff also contends that no privileged documents are being withheld. It states that it has produced the documents but redacted the privileged information. (*Id.*).

Defendants request that Plaintiff be directed to produce a privilege log. They argue that it is impossible to believe that there are no such documents. (*Id.* at 4). In addition, Defendants agree that some documents have been produced by Plaintiff but argue that these documents were either not responsive to this discovery request because they were produced even before the request was served or that the documents produced were already possessed by them. (*Id.*).

Plaintiff in its Response spends very little time attempting to demonstrate that it has properly responded to Defendants' First Set of Requests. Most of Plaintiff's Response brief addresses alleged discovery failures of Defendants. (Docket no. 89 at 3-4). Plaintiff's production of some documents on June 27, 2008, before the Requests were served, could not have been in response to Defendants' Requests. Plaintiff contends that it produced responsive documents also on July 1 and October 1, 2008. However, Plaintiff fails to show that these documents constitute all of the responsive documents in

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(Cite as: 2008 WL 5263836 (E.D.Mich.))

its possession, custody or control, and apparently do not constitute all responsive documents because Plaintiff's position in the Joint Statement is that all responsive documents have either been produced or are being compiled for production. The period for timely responding to Defendants' First Set of Rule 34 Requests has long passed. Plaintiff will be ordered to complete its production in response to this set of discovery by a date certain.

*2 With respect to privileged documents, Plaintiff argues that they have all been produced. Defendants speculate but fail to show that there are any privileged documents being withheld by Plaintiff. There is therefore no need for Plaintiff to produce a privilege log.

IT IS THEREFORE ORDERED that Defendants' Motion to Compel (docket no. 77) is **GRANTED** to the extent that on or before January 5, 2009 Plaintiff must fully and completely respond to Defendants' First Set of Rule 34 Requests, and is otherwise **DENIED**.

NOTICE TO THE PARTIES

Pursuant to [Fed.R.Civ.P. 72\(a\)](#), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under [28 U.S.C. 636\(b\)\(1\)](#).

E.D.Mich.,2008.

Tenneco Automotive Co., Inc. v. Kingdom Auto Parts

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Only the Westlaw citation is currently available.

This decision was reviewed by West editorial staff and not assigned editorial enhancements.

United States District Court,
E.D. Michigan,
Southern Division.
The TRAVELERS INDEMNITY CO. OF CON-
NECTICUT, et al., Plaintiffs,
v.
NATIONAL FAIR HOUSING ALLIANCE, INC.,
Defendant.

Civil Action No. 08-CV-14261-DT.
Oct. 28, 2009.

Charles W. Browning, Plunkett & Cooney, Bloom-
field Hills, MI, David A. Dworetzky, Kenneth C.
Newa, Plunkett & Cooney, Detroit, MI, for
Plaintiffs.

Margaret J. Lockhart, Cooper & Walinski, Toledo,
OH, Paul A. Callam, Ann Arbor, MI, for Defend-
ant.

***ORDER GRANTING IN PART AND DENYING
IN PART DEFENDANT'S MOTION TO COM-
PEL PLAINTIFFS TO RESPOND TO DEFEND-
ANT'S FIRST SET OF DISCOVERY REQUESTS
(DOCKET NO. 27)***

MONA K. MAJZOUN, United States Magistrate
Judge.

*1 This matter comes before the Court on De-
fendant's Motion to Compel filed on August 13,
2009. (Docket no. 27). Plaintiffs have responded.
(Docket no. 30). The Defendant has filed a Reply
Brief. (Docket no. 37). The parties have filed a
Joint Statement of Resolved and Unresolved Issues.
(Docket no. 42). The motion has been referred to
the undersigned for decision pursuant to 28 U.S.C.
§ 636(b)(1)(A). (Docket no. 29). A hearing was
held on October 23, 2009 at which counsel for both

parties appeared. The matter is now ready for rul-
ing.

Plaintiffs filed a declaratory judgment action
on October 6, 2008 to determine whether they had a
duty to defend or indemnify the Defendant in an
underlying action brought by Century 21 Town &
Country. (Docket no. 1). Defendant filed a counter-
claim against Plaintiffs for breach of contract. De-
fendant served its First Set of Interrogatories and
Requests for Production on April 17, 2009. (Docket
no. 27). Plaintiffs responded to the discovery re-
quests on May 18, 2009. (Docket no. 1.). In their
response, Plaintiffs produced copies of their insur-
ance policies but provided no other information or
documents. The Joint Statement of Resolved and
Unresolved Issues states that the parties have been
unable to resolve issues relating to Interrogatories
Nos. 1-11 and Requests for Production Nos. 2-18.

Federal Rule of Civil Procedure 26(b) permits
the discovery of nonprivileged information relevant
to any party's claim or defense if it is reasonably
calculated to lead to the discovery of admissible
evidence. Federal Rule of Civil Procedure
37(a)(3)(B) authorizes the Court to compel discov-
ery if a party fails to answer an interrogatory sub-
mitted under Rule 33, or fails to properly respond
to a request submitted under Rule 34.

Plaintiffs argue that this lawsuit should be de-
termined through the application of three clear and
unambiguous provisions in their policies. Plaintiffs
filed a Motion for Summary Judgment on Septem-
ber 1, 2009 seeking judgment as a matter of law
based on the language of their policies. (Docket no.
31). The Motion for Summary Judgment is sched-
uled to be heard before the district court on Decem-
ber 16, 2009. Plaintiffs contend in the instant mo-
tion that the extrinsic evidence sought by Defendant
in its discovery requests is neither relevant nor
reasonably calculated to lead to the discovery of ad-
missible evidence. Plaintiffs further contend that
the Defendant's discovery should only be permitted

Slip Copy, 2009 WL 3497793 (E.D.Mich.)
(Cite as: 2009 WL 3497793 (E.D.Mich.))

if the district court finds that the language of the insurance policies is ambiguous.

Federal Rule of Civil Procedure 26(f) requires parties to address the subjects on which discovery is needed and whether discovery should be limited or conducted in phases. The parties filed their Rule 26(f) report on February 20, 2009. (Docket no. 21). The report does not state that discovery should be limited or bifurcated in any manner. Plaintiffs now seek to limit discovery after discovery requests have been properly served on them by Defendant. Plaintiffs do this by asserting nearly every available ground for objecting to a discovery request to each and every request made by Defendant, and by failing to provide any information or documents other than their insurance policies.

*2 The Court finds that Interrogatories Nos. 1-11 are relevant to the claims and defenses in this action. Specifically, Interrogatories Nos. 1-6, 9, and 11 ask Plaintiffs to identify individuals with knowledge of the Plaintiffs' insurance policies and the claims and defenses in this action. Interrogatories Nos. 7-8 ask Plaintiffs to explain the factual and/or legal basis for their Affirmative Defenses asserted in Plaintiffs' Answer to Defendant's Counterclaim. Interrogatory No. 10 asks Plaintiffs to identify and provide information for each person they expect to call as an expert witness at trial. The Court further finds that Requests for Production Nos. 9 and 11-13 are relevant to the claims and defenses in this action, because they ask for documents related to Plaintiffs' review of their indemnity and defense obligations and Defendant's claim for coverage.

The Court will order Plaintiffs to serve on Defendant on or before November 6, 2009 signed, complete written answers to Interrogatories Nos. 1-9 and 11. With respect to Interrogatory No. 3, which asks for the name and address of all persons responsible for procuring and underwriting Plaintiffs' policies, Plaintiffs are ordered to respond only for the years 2000 to present. The Court will further order Plaintiffs to supplement their response to Interrogatory No. 10 at the time they file their

witness list and no later than November 2, 2009. The Court will further order Plaintiffs to produce responses and documents to Requests for Production Nos. 9 and 11-13 on or before November 6, 2009.

The Court will deny without prejudice Defendant's Motion to Compel responses to Requests for Production Nos. 2-8 and 10, which pertain to more extensive document requests related to underwriting, drafting history, amendments, internal manuals and guidelines, communications, and document retention policies. These requests may be re-served before the close of discovery and after the district court rules on the Defendant's Motion for Summary Judgment if necessary.

The Court will further deny without prejudice as premature Defendant's Motion to Compel responses to Requests for Production Nos. 14-17, which ask for expert witness qualifications, expert reports, and documents Plaintiffs intend to rely upon at trial. The Court will deny Defendant's Motion to Compel Request for Production No. 18, because it asks for all documents related to Plaintiffs' responses to Plaintiffs' First Set of Interrogatories and would not produce responsive documents.

IT IS THEREFORE ORDERED that Defendant's Motion to Compel Plaintiffs to Respond to Defendant's First Set of Discovery Requests is **GRANTED** in part and Plaintiffs will serve the following on Defendant on or before November 6, 2009:

1. Written and signed answers to Interrogatories Nos. 1-9 and 11, except that in relation to Interrogatory No. 3 Plaintiffs' response will be limited to the years 2000 to present.

2. A written and signed supplemental response to Interrogatory No. 10 on or before November 2, 2009.

*3 3. Written and signed responses to and all documents requested by Requests for Production

Slip Copy, 2009 WL 3497793 (E.D.Mich.)
(Cite as: 2009 WL 3497793 (E.D.Mich.))

Nos. 9 and 11-13.

IT IS FURTHER ORDERED that Defendant's Motion to Compel is **DENIED** without prejudice as to Requests for Production Nos. 2-8, 10, and 14-17.

IT IS FURTHER ORDERED that Defendant's Motion to Compel is **DENIED** with prejudice as to Request for Production No. 18.

NOTICE TO THE PARTIES

Pursuant to [Federal Rule of Civil Procedure 72\(a\)](#), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under [28 U.S.C. § 636\(b\)\(1\)](#).

E.D.Mich.,2009.
Travelers Indem. Co. of Connecticut v. National Fair Housing Alliance, Inc.
Slip Copy, 2009 WL 3497793 (E.D.Mich.)

END OF DOCUMENT

9. Letter from Amy Fitzpatrick, U.S. Dept. of Justice, to Ashley Cummings, Hunton & Williams (December 22, 2011)
10. Letter from Ashley Cummings, Hunton & Williams, to Amy Fitzpatrick, U.S. Dept. of Justice (January 6, 2012)
11. Letter from Ashley Cummings, Hunton & Williams, to Amy Fitzpatrick, U.S. Dept. of Justice (January 20, 2012)
12. Letter from Amy Fitzpatrick, U.S. Dept. of Justice, to Ashley Cummings, Hunton & Williams (January 24, 2012)
13. Letter from Ashley Cummings, Hunton & Williams, to Amy Fitzpatrick, U.S. Dept. of Justice (February 2, 2012)
14. Letter from Ashley Cummings, Hunton & Williams, to Amy Fitzpatrick, U.S. Dept. of Justice (February 7, 2012)
15. Declaration of A. Fitzpatrick in Support of Plaintiffs' Motion to Compel (February 10, 2012)
16. Defendant Blue Cross Blue Shield of Michigan's Objections and Responses to Plaintiffs' Second Request for Production of Documents (September 6, 2011)
17. Annual Statement For the Year Ended December 31, 2010 of the Condition and Affairs of Blue Cross Blue Shield of Michigan
(http://www.michigan.gov/documents/dleg/BCBSM_346886_7.pdf)
18. Blue Care Network of Michigan: About Us (<http://www.mibcn.com/about/>)
19. Blue Care Network of Michigan: Corporate Structure
(<http://www.mibcn.com/about/corporate/corpStructure.shtml>)
20. SEALED: Organizational Chart (BlueM-99-000006 of BlueM-99-000001)
21. SEALED: Munson Medical Center and Blue Cross Blue Shield of Michigan Participating Hospital Agreement, TRUST Hospital Agreement and Blue Care Network Hospital Affiliation Agreement Letter of Understanding (February 1, 2010; BLUECROSSMI-98-001415-18)
22. SEALED: Letter from Brian Rodgers, MidMichigan Health, to Eric Kropfreiter, Blue Cross Blue Shield of Michigan (November 13, 2008; BLUECROSSMI-08-009329-43)

23. SEALED: Ascension Health and Blue Cross Blue Shield of Michigan Participating Hospital Agreement, TRUST Hospital Agreement and Blue Care Network Hospital Affiliation Agreement Letter of Understanding (October 22, 2008; BLUECROSSMI-10-002455-65)
24. SEALED: Pennock Hospital and Blue Cross Blue Shield of Michigan Participating Hospital Agreement, TRUST Hospital Agreement and Blue Care Network Hospital Affiliation Agreement Letter of Understanding (June 12, 2006; BLUECROSSMI-08-018205-211)
25. SEALED: Blue Care Network Team Meeting Recap, *Ways to increase BCN/BCBSM market share in west Michigan* (April 6, 2006; BLUECROSSMI-E-0075896-97)
26. SEALED: Blue Cross Blue Shield of Michigan presentation, *West Michigan-Upper Peninsula November 25th Update* (November 24, 2008; BLUECROSSMI-E-0124248-61)
27. SEALED: Blue Cross Blue Shield of Michigan Actuarial and Underwriting Business Partner Charter (BLUECROSSMI-E-0053666-68)
28. SEALED: E-mail from Joe Bojman to Kevin Klobucar, Kelley Monterusso, David Nelson, Jeffrey Connolly, Seth Crawford and Michelle Pace, RE: Summary of Northern Michigan Call: Updated (June 28, 2007; BLUECROSSMI-E-0092284-86)
29. SEALED: E-mail from Shlynn Rhodes to Sylvia Norton, Kellie Norton, Kelley Monterusso and Melissa Withrow, RE: 11/25/08 Bartlett & Dallafior Meeting Presentation (November 24, 2008; BLUECROSSMI-E-0124233-34)
30. SEALED: E-mail from Doug Darland to Kevin Lanciotti, RE: follow-up? (December 10, 2009; BLUECROSSMI-E-0109996-99)
31. Press Release, *Blue Cross Blue Shield of Michigan Names Seitz as Executive Vice President of Health Care Value Enhancement and Carlson as President and CEO of Blue Care Network* (September 29, 2006; <http://www.mibcn.com/about/corporate/historyHighlights.shtml>; http://www.mibcn.com/pr/pr_09-29-2006_31583.shtml)
32. SEALED: E-mail from Kevin Seitz to Kim Sorget, Mark Bartlett, Mike Schwartz and Daniel Loep, RE: PHA Hospital Contracting Principles (August 6, 2005; BLUECROSSMI-03-000718-19)
33. SEALED: E-mail from Doug Darland to Kevin Seitz and Mike Schwartz, RE: Beaumont update for meeting (November 12, 2004; BLUECROSSMI-99-050881-82)
34. Unpublished Cases